

***United States Court of Appeals
for the
District of Columbia Circuit***



**TRANSCRIPT OF
RECORD**

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United States Court of Appeals for the
District of Columbia

OCTOBER TERM, 1936

No. 6885

94

CARRIE GOLDENBERG, APPELLANT,

vs.

JUSTUS S. WARDELL, AS RECEIVER OF DISTRICT
NATIONAL BANK OF WASHINGTON, AND SAM-
UEL GOLDENBERG.

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR
THE DISTRICT OF COLUMBIA.

FILED DECEMBER 14, 1936

PRINTED FEBRUARY 3, 1937

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vs.

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NATIONAL BANK OF WASHINGTON, AND SAM-
UEL GOLDENBERG, APPELLEES.

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR
THE DISTRICT OF COLUMBIA.

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United States Court of Appeals for the District of Columbia

a. District Court of the United States for the
District of Columbia.

No. 58093 In Equity

CARRIE GOLDENBERG, *Plaintiff*,

v.

NORMAN R. HAMILTON, as Receiver of DISTRICT NATIONAL
BANK OF WASHINGTON, and SAMUEL GOLDENBERG,
Defendants.

UNITED STATES OF AMERICA,
District of Columbia, ss:

BE IT REMEMBERED, That in the District Court of the
United States for the District of Columbia, at the
City of Washington, in said District, at the times
hereinafter mentioned, the following papers were
filed and proceedings had, in the above-entitled
cause, to wit:—

1 *Amended Bill to Require Delivery of Securities.*

Filed January 24 1935

In the Supreme Court of the District of Columbia
Holding a Court of Equity.

Equity No. 58093.

CARRIE GOLDENBERG, *Plaintiff*,

v.

NORMAN R. HAMILTON, as Receiver of DISTRICT NATIONAL
BANK OF WASHINGTON; and SAMUEL GOLDENBERG,
Defendants.

To the Honorable, the Supreme Court of the District of
Columbia, holding a Court of Equity.

The Amended Bill of Complaint of Carrie Goldenberg,
by leave of Court here for that purpose first had and ob-
tained, respectfully shows to the Court:

1. That she is a citizen of the United States and a resident of the District of Columbia, is of full age, and files this Bill in her own right.

2. The defendant Norman R. Hamilton, is a citizen of the United States and a resident of the District of Columbia, is of full age, and is sued as Receiver of the District National Bank of Washington, a National banking institution, as hereinafter appears; and the defendant Samuel Goldenberg is a citizen of the United States and a resident of the District of Columbia, is of full age, and is sued in his own right.

3. Heretofore, to wit, during the month of July, 1932, the District National Bank of Washington, hereinafter referred to as the Bank, was a National banking association organized and existing as a body corporate under and by virtue of the laws of the United States, engaged in business as a National bank in the District of Columbia, and one Samuel Goldenberg, who was then, and from thence hitherto has continued to be, and is now the husband of the plaintiff, was indebted unto said association in the sum of approximately Six thousand five hundred ninety-four and 83/100 dollars (\$6,594.83), which said indebtedness was represented by the promissory note of the said Samuel Goldenberg, dated October 20, 1931, originally in the sum of Twelve thousand dollars (\$12,000.00), payable to the order of said Bank on demand, with interest at the rate of six per centum (6%) per annum, and secured by the deposit by the defendant Samuel Goldenberg with said Bank of certain collateral consisting of the following securities:

- 1 \$1,000 6% bond of the Baltimore and Ohio Railroad Company, due 1995
- 20 Shares of the common stock of General Foods Corporation
- 100 Shares of the common stock of Remington Rand, Inc.
- 100 Shares of the common stock of Commercial Solvents
- 211 Shares of the common stock of National Dairy Products
- 60 Shares of the common stock of Tricontinental Corporation
- 100 Shares of the common stock of Radio Keith Orpheum
- 100 Shares of the common stock of Radio Corporation of America
- 100 Shares of the common stock of Mengel Company

8 Shares of the preferred stock of Vadsco Sales Corporation

30 Shares of the A preferred stock of Radio Corporation of America

Said securities were at said time, and from thence hitherto have continued to be the property of the defendant Samuel Goldenberg, subject to the rights of the plaintiff in regard thereto, as hereinafter more fully appears.

4. At the time hereinbefore mentioned, the said plaintiff had on deposit with the Oriental Building and Loan Association No. 6, a building association engaged in business in the District of Columbia, a sum in excess of Four thousand dollars (\$4,000.00), which money was the sole and exclusive property of the said plaintiff; and shortly prior to the 18th day of July, 1932, in the course of a conference between the said Samuel Goldenberg, who was then and there acting on behalf of himself, and also as the agent of the said plaintiff, and one Christian J. Gockeler who was then and there an officer of said Bank, and who was then and there properly authorized to act for and on behalf of said Bank, and was in fact then and there acting on its behalf, it was agreed, by and between the said Samuel Goldenberg, acting on behalf of himself and of the said plaintiff, and the said Christian J. Gockeler, acting on behalf of said Bank, that if the said plaintiff would withdraw out of her funds in said Building Association the sum of Four thousand dollars (\$4,000.00) and apply the same to the payment of said indebtedness so as aforesaid owing by the said Goldenberg to said Bank, said Bank would deliver said securities for the account of the plaintiff to such firm of stockbrokers as might be designated by her or by the said Samuel Goldenberg, upon payment by such stockbrokers to said Bank of the balance owing on said indebtedness of the said Samuel Goldenberg remaining after the payment of said sum of Four thousand dollars (\$4,000.00).

5. Thereafter, and pursuant to said agreement, the said Samuel Goldenberg, acting on behalf of himself and on behalf of said plaintiff, did make an arrangement to have said stocks delivered to a firm of stockbrokers, which agreed with the defendant Samuel Goldenberg, who was then and there acting on behalf of the plaintiff, upon delivery to it of said collateral to advance, upon the security thereof, such

amount as, together with said sum of Four thousand dollars (\$4,000.00), would fully pay said indebtedness of the said Goldenberg to the said Bank, and to pay said sum
4 of money to said Bank upon the delivery of said collateral to said firm of stockbrokers.

6. Thereafter, and in pursuance of said agreement, and in reliance thereupon, to wit, on or about the 18th day of July, 1932, the said plaintiff did withdraw from said Building Association the said sum of Four thousand dollars (\$4,000.00), and on, to wit, the 18th day of July, 1932, paid said sum to said Bank, and said sum was accordingly credited against the said indebtedness of the said Goldenberg to the said Bank, thereby reducing the amount of the principal of said indebtedness to the sum of Two thousand five hundred ninety-four and 83/100 dollars (\$2,594.83); and thereafter the said plaintiff, by the said Samuel Goldenberg, offered to pay the balance of said indebtedness upon compliance by said Bank with its said agreement in respect of said collateral, but said Bank notified the said Samuel Goldenberg, then and there acting on behalf of the said plaintiff that it would not deliver up or release said collateral upon payment of the balance of said indebtedness, but, on the contrary, would refuse to do so and it did in fact refuse to release or deliver up said collateral, and never did deliver up or release the same.

7. Thereafter, to wit, on the 14th day of March, 1933, pursuant to the provision of the Act of Congress entitled "An Act to Provide Relief in the Existing National Emergency in Banking and for Other purposes," approved March 9, 1933, (U. S. C. Tit. 12, Sec. 203), one Joshua Evans, Jr., was, by the Comptroller of the Currency of the United States, appointed Conservator of said Bank, and continued as such until, to wit, the 7th day of December, 1933, upon which date the said Comptroller of the Currency, having determined that said Bank was insolvent, appointed the defendant Receiver thereof, and since said date said
5 defendant has been and is now such Receiver; and neither said Conservator nor said Receiver have ever delivered up or surrendered said collateral in accordance with said agreement.

8. Said collateral, at the time of said payment, was of a total market value of approximately Nine thousand dol-

lars (\$9,000.00), and at the present time is of the market value of approximately Eleven thousand dollars (\$11,000.00). Said collateral is in the possession of the defendant as Receiver as aforesaid.

9. The plaintiff hereby tenders herself ready, able and willing to pay to the defendant the balance owing on said indebtedness of the said Samuel Goldenberg, with interest thereon either to the date of said payment or to such other date as to the Court shall seem just, upon delivery of said collateral in accordance with said agreement, and to do and perform such other acts and things as justice and equity may require.

WHEREFORE, being without a plain, adequate and complete remedy at law, the said plaintiff prays:

1. That the United States writ of subpoena issue against the said defendant, requiring him to appear herein and answer the exigencies of this Bill of Complaint.

2. That a decree be passed herein adjudging that the plaintiff is the owner of said securities and entitled thereto and to the possession thereof, and that the said defendant be required to deliver the same to the plaintiff upon payment to the defendant, as Receiver as aforesaid, of such amount or amounts as this Honorable Court shall decree ought to be paid.

3. That the Court award to this plaintiff such amount of damages as she may be found to be entitled to by reason of the wrongful and unlawful detention and withholding from her of said securities.

4. That the defendant be enjoined and restrained, pendente lite and permanently from transferring, selling, hypothecating, pledging, or otherwise disposing of, or appropriating to his own use as such Receiver the collateral hereinbefore mentioned.

5. And that the plaintiff may have such other and further relief as the nature of the case may require and to this Honorable Court seem meet and proper.

CARRIE GOLDENBERG

DISTRICT OF COLUMBIA, ss:

Carrie Goldenberg, being on oath first duly sworn according to law, deposes and says that she has read the foregoing amended bill by her subscribed and knows the contents

thereof; and that she verily believes that all of the allegations therein contained are true.

CARRIE GOLDENBERG.

SUBSCRIBED and sworn to before me this 23d day of January, 1935.

(Seal)

CARL M WEIGLE
*Notary Public in and for
the District of Columbia.*

SIMON, KOENIGSBERGER, YOUNG & COLLINS
LAWRENCE KOENIGSBERGER
Attorneys for Plaintiff.

Filed on behalf of:
Carrie Goldenberg,
2819 27th St., N. W.
Washington, D. C.

7 *Answer of Defendant Norman R. Hamilton, to
Amended Bill.*

Filed February 27 1935

* * * * * * * * *

Comes now the defendant Norman R. Hamilton, as Receiver of District National Bank of Washington, and for answer to the amended bill to require delivery of securities, filed herein, says:

1. This defendant admits the allegations contained in paragraph 1 of said amended bill.

2. This defendant admits the allegations contained in paragraph 2 of said amended bill.

3. This defendant admits, upon information and belief, the allegations contained in paragraph 3 of said amended bill, subject, however, to the rights, as hereinafter more fully set forth, of this defendant in and to the said securities mentioned in said paragraph 3.

4. Answering paragraph 4 of said amended bill, this defendant has no knowledge or information that the plaintiff had on deposit with the Oriental Building and Loan Association No 6, in the District of Columbia, a sum in excess of \$4,000.00, which money was the sole and exclusive property of the said plaintiff, and calls for strict proof of same,

if material and necessary. Further answering said paragraph 4, upon information and belief, this defendant denies that shortly prior to the 18th day of July, 1932, or at any other time, in the course of a conference between the said Samuel G. Goldenberg mentioned in said paragraph 4, and the said Christian J. Gockeler, who was at that time an officer of the said District National Bank of Washington and was then and there acting as such, it was agreed by and between said Samuel Goldenberg acting on behalf of himself and of the plaintiff herein, and the said

8 Christian J. Gockeler, who was then acting on behalf of said Bank, that if the said plaintiff would withdraw out of her alleged funds in the foregoing Building Association the sum of \$4,000.00 and apply the same to the payment of the aforesaid indebtedness of the said Samuel Goldenberg to District National Bank of Washington, that said Bank would deliver the foregoing securities for the account of the plaintiff to such firm of stockbrokers as might be designated by plaintiff, or by said Samuel Goldenberg, upon payment by such stockbrokers to the foregoing bank of the balance owing on the said indebtedness of the said Samuel Goldenberg remaining after the payment of the said sum of \$4,000.00.

5. This defendant is without knowledge or information sufficient to form a belief as to the truth of the allegation contained in paragraph 5 of said amended bill, and, therefore, denies the same.

6. Answering paragraph 6 of said amended bill, this defendant is without knowledge or information sufficient to form a belief as to whether on, to-wit, the 18th day of July, 1932, the said plaintiff, in pursuance of the foregoing alleged agreement and in reliance thereupon, withdrew from the said Building Association the sum of \$4,000.00, and on or about the 18th day of July, 1932, paid said sum to the Bank, and, therefore, denies the same. Upon information and belief, this defendant admits that on or about the 18th day of July, 1932, the sum of \$4,000.00 was credited on the foregoing indebtedness of the said Samuel Goldenberg to District National Bank of Washington, which reduced the amount of the principal remaining due on said indebtedness to the sum of, to-wit, \$2,594.83. This defendant further says the said principal sum of \$2,594.83, together with in-

terest thereon from October 20, 1931, is still due and owing by the said Samuel Goldenberg to this defendant as Receiver of said District National Bank of Washington. Fur-

9 further answering said paragraph 6, this defendant is without knowledge or information sufficient to form a

belief as to whether said plaintiff, by the said Samuel Goldenberg, offered to pay the balance of the foregoing indebtedness upon the condition set forth in said paragraph 6 with respect to the said collateral, and, therefore, denies the same. Further answering said paragraph 6, this defendant admits the foregoing collateral was not released or delivered to the said Samuel Goldenberg or to the plaintiff.

7. This defendant admits the allegations contained in paragraph 7 of said amended bill.

8. This defendant admits that the foregoing collateral is in the possession of this defendant as Receiver of said District National Bank of Washington, and that its present market value is approximately \$11,000.00.

9. This defendant has no knowledge or information as to the readiness, ability or willingness of the said plaintiff to pay to this defendant the balance due on the foregoing indebtedness of the said Samuel Goldenberg, and, therefore, denies the same.

10. Further answering said amended bill, this defendant says that in and by the written collateral agreement, which was a part of the aforesaid note of the said Samuel Goldenberg, dated October 20th, 1931, pursuant to which and by virtue of which the collateral securities set forth in paragraph 3 of said amended bill were deposited, the said Samuel Goldenberg agreed that the foregoing securities were deposited and would be held as collateral security for the payment of the aforesaid note of October 20th, 1931, and any other liability of the said Samuel Goldenberg to the holder thereof, and that the foregoing securities so deposited should be held as one general collateral security for the whole or any part of the foregoing obligation and any or all obligations due, or thereafter to become due, by the said Samuel Goldenberg to the holder. This defen-

10 defendant further says, upon information and belief, that said note dated October 20th, 1931, was continuously held by said District National Bank of Washington from, to-wit, October 20th, 1931, until the appointment of

the defendant as Receiver on November 6th, 1933, and this defendant has continuously held said note since the date of his aforesaid appointment. A copy of said note and collateral agreement is set forth in an appendix annexed hereto marked Exhibit "A," and made a part of this answer by this reference.

11. Further answering said amended bill, this defendant says, upon information and belief, that on, to-wit, June 10, 1932, the said Samuel Goldenberg was an endorser on a certain promissory note dated, to-wit, June 10, 1932, executed by Vogue Dry Cleaning Co., a corporation, by the said Samuel Goldenberg as President thereof, payable to said District National Bank of Washington in the principal sum of, to-wit, \$16,000.00, which represented a balance due, after curtailments and renewals from time to time, on an original loan in the amount of some \$40,000.00 made on, to-wit, March 3d, 1927, to said Vogue Dry Cleaning Co. by said District National Bank of Washington. This defendant further says, upon information and belief, that said Samuel Goldenberg endorsed the aforesaid note of Vogue Dry Cleaning Co. dated, to-wit, June 10, 1932, before delivery to said District National Bank of Washington, for the purpose of securing credit to the maker thereof, and likewise endorsed the note representing the original loan of \$40,000.00, and each and every renewal thereof. This defendant further says, upon information and belief, that said note of Vogue Dry Cleaning Co. dated, to-wit, June 10, 1932, on which the said Samuel Goldenberg was endorser, was held by said District National Bank of Washington, on, to-wit, July 18, 1932, and had not been paid. This defendant

11 further says, upon information and belief, that the foregoing note of Vogue Dry Cleaning Co. dated, to-wit, June 10, 1932, was curtailed and renewed on, to-wit, September 12th, 1932, and a renewal note was given therefor, dated September 1, 1932, signed by said Vogue Dry Cleaning Co. by said Samuel Goldenberg as President thereof, payable ninety days after date to said District National Bank of Washington, at said Bank, in the principal sum of \$15,000.00, and endorsed by the said Samuel Goldenberg, before delivery thereof to said District National Bank of Washington, for the purpose of securing credit to the maker thereof. This defendant further says, upon infor-

mation and belief, that the foregoing note of September 12th, 1932, in the principal sum of \$15,000.00, was duly presented for payment and was dishonored and protested, of which the said Samuel Goldenberg had due notice, and that neither the said Vogue Dry Cleaning Co. nor the said Samuel Goldenberg, nor anyone else, has paid the said note or any part thereof. This defendant further says, upon information and belief, that the aforesaid note dated September 12, 1932, was held and continued to be held by the said District National Bank of Washington from, to-wit, September 12th, 1932, until the appointment of this defendant on November 6th, 1933, as Receiver of said Bank; whereupon the said note passed into the possession and control of the defendant and this defendant continuously since the time of his appointment as said Receiver has retained possession, control, and ownership of said note.

12. Further answering said amended bill, this defendant says that an action has been instituted on the said note dated September 12, 1932, in the principal amount of \$15,000.00 against the said Samuel Goldenberg and one Morris Y. Needle, who is also an endorser of the said note, in a certain proceeding in the Supreme Court of the District of Columbia, being at Law No. 82373, which is still pending in this Court.

12 13. Further answering said amended bill, this defendant says that by virtue of the aforesaid collateral agreement and the terms thereof, and by reason of the indebtedness and obligations of the said Samuel Goldenberg, as aforesaid, that he holds and continues to hold the aforesaid collateral and that he is entitled to hold the same until the indebtedness represented by the said note of October 20th, 1931, in the principal sum of \$2,594.83, and the said note of September 12th, 1932, in the principal sum of \$15,000.00, has been fully paid.

14. Further answering said amended bill, this defendant admits to this Honorable Court that all the matters in the complainant's bill mentioned and complained of are matters which may be tried and determined at law and with respect to which complainant is not entitled to any relief in a court of equity.

WHEREFORE, having fully answered the said amended

bill, this defendant prays that he may hence be dismissed with his reasonable costs.

NORMAN R. HAMILTON

Receiver

District National Bank of Washington

ANGUS W. McLEAN

CHARLES E. WAINWRIGHT

Attorneys for Defendant Norman R. Hamilton,

as Receiver of District National Bank of Washington.

DISTRICT OF COLUMBIA, ss:

Norman R. Hamilton, being first duly sworn, deposes and says that he is the Receiver of District National Bank of Washington; that he has read the foregoing answer by him subscribed; that the matters and things set forth therein as of personal knowledge are true as he verily believes, and those set forth upon information and belief he believes to be true.

NORMAN R. HAMILTON

Subscribed and sworn to before me this 27th day of February, 1935.

WM. C. LOOKER

Notary Public, D. C.

(Seal)

13

Exhibit "A."

\$12,000.00

Washington, D. C., October 20th 1931

On Demand after date for value received, the undersigned promises to pay to District National Bank or order

AT THE DISTRICT NATIONAL BANK OF WASHINGTON

the sum of Twelve Thousand & 00/100 Dollars with interest at the rate of Six per centum per annum, said interest payable as the holder hereof may demand, having deposited herewith and pledged as collateral security for the payment of this and any other liability of the undersigned to the holder hereof, the following property, to wit:

\$1000.00 Balto. & Ohio R. R. Co.	211 shs Nat Dairy Prod-
6% of 1995	ucts Corp com
20 Shares General Foods Corp.	60 " Tri-Contl Corp
Com.	com

100 shares Remington Rand Inc Com	100 “	Radio Keith Or- pheum Corp
100 shares Commercial Solvent Inc Com		com
8 shares Vadsco Sales Corp pfd	100 “	Radio Corp of Amer com
	30 “	Radio Corp of Amer A pfd
	100 “	Mengel Co com

the market value of which is now \$.....and it is understood and agreed by the undersigned as follows:

FIRST. That upon demand by the holder of this note he will at the absolute option of said holder, either deposit additional collateral security to the satisfaction of the holder, or pay on account of this note such cash sum as the holder may consider equivalent to any depreciation of said collateral below the value above fixed.

SECOND. That the collateral herewith pledged, including any and all additions thereto or substitutions therefor, together with any and all other securities and property in the possession of the holder (belonging to any of the parties liable hereon), whether pledged or left with the holders hereof for collection or safekeeping, shall be held as one general collateral for the whole or any part of this, any or all obligations due, or hereafter to become due by the undersigned to the said holder.

THIRD. That if default be made in any of the above agreements, this note and any and all other obligations and liabilities of the undersigned to the holder hereof may, at the option of the holder, become immediately due and payable as though they, any or all of them, had matured.

FOURTH. Upon default in payment of the principal hereof or interest thereon, as herein provided, or upon the non-performance by the undersigned of any of the agreements herein contained, or in the event of an application for the appointment of a receiver, filing of a petition in bankruptcy, or a general assignment by or against the undersigned or any party liable hereon, or of any other act of insolvency however indirect, the holder hereof is authorized and empowered at its option, with or without notice, to sell at public or private sale, or on the stock exchange and deliver to the purchaser thereof the whole or any part of said collateral and any additions thereto or substitutions

therefor, free of all trusts and claims, the proceeds of such sale to be applied to the payment of this, and any and all obligations due, or which may become due, by the undersigned to the holder, with interest, after deducting
 14 all legal and other costs of collection, sale and delivery. Should the holder hereof take any proceeding with respect to the collection of this note, or the holding or sale of said collateral, or any part thereof, the said holder shall be paid such additional costs and expenses as may be caused thereby, including reasonable counsel fees.

Upon any sale by virtue hereof, the holder may purchase the whole or any part of the aforesaid collateral discharged from any right of redemption, which is hereby expressly waived and relased.

FIFTH. Upon the failure to comply with any of the agreements herein set forth, the holder may, at his option, appropriate and apply to the payment of this note, or any other direct or contingent obligations or liabilities of the undersigned to said holder, whether now existing or hereafter arising, any and all moneys in the hands of said holder on deposit or otherwise to the credit of, or belonging to the undersigned, whether this note or any other of said obligations or liabilities are due or not.

SIXTH. To remain personally liable for any deficiency in the collateral security for the payment of this note and any and all obligations of the undersigned and to pay reasonable counsel fees and costs incurred by the holder in connection therewith, waiving any benefit, exemptions or privileges under any law now or hereafter to be in force.

SAM GOLDENBERG

No.

Address 300 Eye Street N E

(On back)

No. 10189

Sam Goldenberg

	12 000 00
Dec. 1, 1931	1 000 00
	11 000 00
Dec 14 1931	1 000 00
	10 000 00

Dec 18 1931	1 105 17
	8 894 83
Jan 13 1932	2 300 00
	6 594 83
Jul 18 1932	4 000 00
	2 594 83

INTEREST PAYMENTS

WHEN PAID	AMOUNT	PAID TO INCLUSIVE
Int paid to		Aug 31, 1932

15

Amendment To Amended Bill

Filed In Open Court January 20, 1936.

* * * * *

Comes now Carrie Goldenberg, plaintiff in the above-entitled cause, and by leave of Court here for that purpose first had and obtained, hereby amends her Amended Bill herein by adding a paragraph, designated as Paragraph 4 (a) thereto, as follows:

4 (a). Thereafter an agreement was entered into by and between the plaintiff and the defendant Samuel Goldenberg, by which it was agreed between them that the plaintiff would pay the sum of Four thousand dollars (\$4,000.00) out of her own funds on account of the promissory note of the defendant Samuel Goldenberg, dated October 20, 1931, and held by the said District National Bank of Washington, as set forth in Paragraph 3 of the Amended Bill herein, and, in consideration thereof, the defendant Samuel Goldenberg would convey to the plaintiff all of said securities, subject to the right of said Bank thereto as security for the balance remaining owing on said note after the payment of said sum of Four thousand dollars (\$4,000.00); and that the plaintiff would arrange with a firm of stockbrokers to have said firm of stockbrokers advance, on the security of said stocks, such sum of money as, together with the said sum of Four thousand dollars (\$4,000.00), would be required to pay said note in full, and thereby obtain the de-

livery of said stocks to said stockbrokers for the account of, and as the property of the plaintiff, so that the plaintiff would then own said stocks, subject only to the lien of said stockbrokers for the amount advanced by them.

CARRIE GOLDENBERG
SIMON, KOENIGSBERGER & YOUNG
LAWRENCE KOENIGSBERGER
Attorneys for Plaintiff.

16 DISTRICT OF COLUMBIA, ss:

Carrie Goldenberg, being on oath first duly sworn according to law, deposes and says that she has read the foregoing Amendment to her Amended Bill by her subscribed, and knows the contents thereof; and that the allegations therein contained are true.

CARRIE GOLDENBERG
SUBSCRIBED and SWORN to before me this day
of January, 1936.

FRANK E. CUNNINGHAM, *Clerk,*
By R. D. QUINTER JR
Ass't Clerk

Let the foregoing Amendment be filed.

JENNINGS BAILEY
Justice.

*Answer of Defendant Norman R. Hamilton, Receiver of
District National Bank of Washington, To
Amendment To Amended Bill*

Filed In Open Court, January 20, 1936

* * * * *

Comes now Norman R. Hamilton, Receiver of the District National Bank of Washington, and for an answer to the amendment to the amended bill of complaint herein, respectfully says unto this Honorable Court as follows:

4 (a). This defendant denies on information and belief that any such agreement was entered into between plaintiff and the defendant Samuel Goldenberg as in said Paragraph set forth, and further says that on July 18, 1932, and for many years prior thereto and ever since said date, the de-

17 fendant Samuel Goldenberg was and has been indebted to the District National Bank of Washington and to this defendant in large sums of money, which sums of money still remain in large part unpaid. And this defendant further says that in a certain action at law in the Supreme Court of the District entitled "Hamilton, Receiver of District National Bank of Washington vs. Goldenberg, et al., Law No. 82,373" judgment was entered against the said defendant Samuel Goldenberg on March 9, 1935, in the amount of \$15,000.00 with interest from September 12, 1932, at six per cent, plus protest fee of \$2.14, plus an attorney's fee of \$200.00, besides costs, and that no part of said judgment has been paid. And this defendant further says on information and belief that at the time of the alleged making of the alleged agreement between plaintiff and defendant Samuel Goldenberg, and prior thereto and ever since said time the defendant Samuel Goldenberg has been insolvent and has been unable to pay his just and legal debts and obligations to the District National Bank of Washington, and to this defendant as Receiver thereof.

And this defendant having fully answered the amendment to the amended bill of complaint, further prays that the said amended bill of complaint be as to him and the trust represented by him as Receiver, dismissed with proper costs.

NORMAN R. HAMILTON,
Receiver of
District National Bank of Washington

By: BRICE CLAGETT
CHARLES E. WAINWRIGHT
Attorneys for Norman R. Hamilton,
Receiver District National Bank.

BRICE CLAGETT
CHARLES E. WAINWRIGHT
Attorneys for Norman R. Hamilton,
Receiver District National Bank

•

DISTRICT OF COLUMBIA, ss:

Brice Clagett and Charles E. Wainwright, being first duly sworn, on oath depose and say that they are attorneys for the defendant Norman R. Hamilton, who is temporarily absent from the District of Columbia; that they have read the answer to the amendment to the amended bill by them subscribed and know the contents thereof; that the matters and things therein stated on information and belief they believe to be true, and those stated therein as true are true.

BRICE CLAGETT
CHARLES E. WAINWRIGHT

Subscribed and sworn to before me this 20 day of January, 1936.

FANNY E. FREEMAN
Notary Public, D. C.

(Seal)

Let this be filed.

JENNINGS BAILEY
Justice

Memorandum

JANUARY 20—1936.

Final hearing by Bailey, J.; testimony taken; reported; concluded.

Order Allowing Amendment To Answer

Filed March 23 1936

* * * * *

Upon consideration of the motion of the defendant, Norman R. Hamilton, as Receiver of the District National Bank of Washington, filed herein, it is by the Court, this 23rd day of March, 1936

ORDERED, that the motion for leave to amend the answer to the amended bill herein is hereby granted.

JENNINGS BAILEY
Justice

19 *Amendment To Answer of Defendant Norman R.
Hamilton To Amended Bill of Complaint*

Filed March 23 1936

* * * * *

Comes now Norman R. Hamilton, Receiver, District National Bank of Washington, and for further answer to the amended bill of complaint respectfully says to this Honorable Court as follows:

4 (b). Further answering said paragraph 4, defendant denies that said Christian J. Gockeler acted on behalf of said bank in making the said alleged agreement or any agreement with the said Samuel Goldenberg, or with the said Carrie Goldenberg, or with either of them, and alleges that said Christian J. Gockeler had no authority in behalf of said bank or otherwise to make the said agreement with the said Samuel Goldenberg, acting on behalf of himself and the plaintiff, or either of them, or in any capacity.

NORMAN R. HAMILTON

*Receiver,**District National Bank of Washington*

Let this be filed.

JENNINGS BAILEY,

Justice.

BRICE CLAGETT

CHARLES E. WAINWRIGHT

*Attorneys for Norman R. Hamilton**Receiver, District National Bank of Washington*

DISTRICT OF COLUMBIA, ss:

NORMAN R. HAMILTON, Receiver, District National Bank of Washington, being first duly sworn, on oath deposes and says that he has read the amendment to answer to the amended bill of complaint by him subscribed and knows the contents thereof; that the matters and things therein stated on information and belief he believes to be true and those stated therein as true are true.

NORMAN R. HAMILTON

*Receiver,**District National Bank of Washington*

20 Subscribed and sworn to before me this 7 day of
March, 1936.

(Seal)

LLOYD H JOHNSON
Notary Public, D. C.

Final Decree

Filed June 22 1936

* * * * *

This cause came on to be heard at this term; and there-
upon, upon consideration thereof, it is, this 22nd day of
June, 1936,

ADJUDGED, ORDERED and DECREED as follows,
viz.:

1. That the plaintiff, Carrie Goldenberg, has a lien, in
the amount of Four thousand dollars (\$4,000), with inter-
est thereon at the rate of six percentum (6%) per annum
from the 18th day of July, 1932, on the following bond and
stocks, mentioned and referred to in the bill of complaint
herein, in the hands of the defendant, Norman R. Hamil-
ton, as Receiver of District National Bank of Washington,
or such other securities as he may hold in substitution
therefor, to wit:

One (1) One thousand dollar (\$1,000) six percentum
(6%) bond of the Baltimore and Ohio Railroad Company,
due 1995.

Twenty (20) shares of the common stock of General
Foods Corporation.

One hundred (100) shares of the common stock of Rem-
ington Rand, Inc.

One hundred (100) shares of the common stock of Com-
mercial Solvents.

Two hundred eleven (211) shares of the common stock of
National Dairy Products.

Sixty (60) shares of the common stock of Tricontinental
Corporation.

One hundred (100) shares of the common stock of Radio
Keith Orpheum.

One hundred (100) shares of the common stock of Radio
Corporation of America.

21 One hundred (100) shares of the common stock of Mengel Company.

Eight (8) shares of the preferred stock of Vadsco Sales Corporation.

Thirty (30) shares of the A preferred stock of Radio Corporation of America.

2. That the said defendant, as Receiver as aforesaid, be, and he is hereby directed forthwith to pay said sum of money, with interest as aforesaid, to the said plaintiff, or to her attorneys of record herein.

3. That upon payment of said sum of money, with interest as aforesaid, the said defendant, as Receiver as aforesaid, shall be entitled to said bond and stocks or such other securities as he may hold in substitution therefore, free, clear and discharged of any and all claim or lien of the said plaintiff to or upon the same.

4. Except as herein decreed, all other relief herein prayed is hereby denied.

JENNINGS BAILEY

Justice

From the foregoing decree the plaintiff, by her attorneys, in open court, notes an appeal to the United States Court of Appeals for the District of Columbia, which is hereby allowed, and the penalty of the undertaking for costs on appeal to be given by said plaintiff is hereby fixed in the sum of One hundred dollars (\$100), or, in lieu thereof, a deposit of Fifty Dollars (\$50) in cash in the Registry of the Court.

And the said defendant, by his attorneys, in open court, notes an appeal to the United States Court of Appeals for the District of Columbia, which is hereby allowed, but said defendant is not required to give any undertaking or other security on said appeal.

JENNINGS BAILEY

Justice.

Approved as to form
BRICE CLAGETT

Attorney for Defendant, Hamilton

22 *Order Substituting Party Defendant*

Filed July 10 1936

* * * * * * * *

Upon consideration of the suggestion of the plaintiff of the resignation of the defendant Norman R. Hamilton, as Receiver of District National Bank of Washington, and the appointment of Justus S. Wardell as such receiver in his place and stead, and the motion of the said plaintiff that the said Justus S. Wardell, as Receiver as aforesaid, be made a party defendant hereto in the place and stead of Norman R. Hamilton, and the said Justus S. Wardell, by his attorney, consenting thereto, it is, by the Court, this 10th day of July, 1936,

ORDERED, that the said Justus S. Wardell, as Receiver of District National Bank of Washington, be, and he is hereby, made a party defendant hereto, in the place and stead of the said Norman R. Hamilton.

JESSE C ADKINS
Justice.

Memoranda

JULY 10—1936.

\$50 deposited in lieu of bond on appeal.

Time to file Statement of Evidence extended from time to time to and including November 12, 1936.

OCTOBER 6—1936.

Order of Court of Appeals extending time to file transcript of record to and including December 15, 1936—filed.

NOVEMBER 12—1936.

Proposed Statement of Evidence filed.

23 *Plaintiff's Assignment of Error.*

Filed December 8 1936

* * * * * * * *

1. The Court erred in not holding and decreeing that the plaintiff was entitled to have delivered to her the securities

mentioned and described in the bill of complaint in the possession of the defendant Hamilton, upon payment of the amount owing on the note of the defendant Goldenberg.

SIMON, KOENIGSBERGER & YOUNG
LAWRENCE KOENIGSBERGER.

Attorneys for Plaintiff.

Memoranda

DECEMBER 8—1936.

Statement of Evidence approved, signed and made part of record.

DECEMBER 10, 1936.

Addition to Statement of Evidence approved, signed and made part of record.

Designation of Record.

Filed July 7—1936

* * * * *

The Clerk of the Court will kindly prepare transcript of record on appeal in the above-entitled cause, and will include therein the following:

1. Amended bill.
2. Answer of defendant Hamilton to amended bill.
3. Amendment to amended bill.
4. Answer of defendant Hamilton to amendment
- 24 to amended bill.
5. Memorandum: Final hearing.
6. Order allowing amendment to answer of defendant Hamilton.
7. Amendment to answer of defendant Hamilton.
8. Final decree; appeals noted.
9. Memorandum:—Plaintiff's undertaking on appeal approved and filed.
10. Memorandum:—Statement of evidence approved, signed and made part of record.
11. This designation.

SIMON, KOENIGSBERGER & YOUNG
LAWRENCE KOENIGSBERGER

Attorneys for Plaintiff.

Service of the foregoing designation of record and receipt of copy thereof, acknowledged this 7 day of July, 1936.

BRICE CLAGETT
Attorney for Defendant Hamilton.

Additional Designation of Record.

Filed July 18 1936

* * * * *

In preparing transcript of record on appeal the Clerk of the Court, in lieu of including a memorandum of the approval and filing of the plaintiff's undertaking on appeal, will insert a memorandum of the making of the deposit for costs on appeal, and will also add to the transcript of record the following:

12. Order substituting Justus S. Wardell, as Receiver of District National Bank of Washington, in the place and stead of the defendant Norman R. Hamilton, as such Receiver.

25 13. Order extending plaintiff's time for the filing of her statement of evidence.

14. This designation.

SIMON, KOENIGSBERGER & YOUNG
LAWRENCE KOENIGSBERGER

Attorneys for Plaintiff.

Service of the foregoing designation of record and receipt of copy thereof, acknowledged this 17th day of July, 1936.

BRICE CLAGETT
Attorney for Defendant Wardell.

26

DISTRICT COURT OF THE UNITED STATES FOR
THE DISTRICT OF COLUMBIA.

UNITED STATES OF AMERICA,
District of Columbia, ss:

I, CHARLES E. STEWART, Clerk of the District Court of the United States for the District of Columbia, hereby certify the foregoing pages numbered from 1 to 25, both

inclusive, to be a true and correct transcript of the record, according to directions of counsel herein filed, copies of which are made part of this transcript, in cause No. 58093 in Equity, wherein Carrie Goldenberg is Plaintiff and Norman R. Hamilton, Receiver of District National Bank of Washington and Samuel Goldenberg are Defendants, as the same remains upon the files and of record in said Court.

IN TESTIMONY WHEREOF, I hereunto subscribe my name and affix the seal of said Court, at the City of Washington, in said District, this 11th day of December, 1936.

(Seal)

C. E. STEWART,
Clerk.

27 In the District Court of the United States for
the District of Columbia

Equity No. 58,093.

CARRIE GOLDENBERG, *Plaintiff,*

VS.

JUSTUS S. WARDELL, as Receiver of DISTRICT NATIONAL BANK
OF WASHINGTON, *Defendant.*

Statement of Evidence.

Be it remembered that the above-entitled cause came on for hearing before Mr. Justice Bailey on the 20th day of January, 1936.

Messrs. Morris Simon and Lawrence Koenigsberger appeared on behalf of the plaintiff and Messrs. Brice Clagett and Charles E. Wainwright appeared on behalf of the defendant Hamilton.

And thereupon, to maintain the issues on her part joined, the plaintiff offered the following witnesses, who, being first duly sworn, testified in substance as hereinafter set forth:

Samuel Goldenberg

Direct Examination.

I am manager of the Vogue Cleaners, which is engaged in the business of cleaning and dyeing; in 1932 and prior thereto I was connected with the Vogue Dry Cleaning Company, a different corporation.

In July, 1932, and for fifteen years prior to that I personally had been dealing with the District National Bank, and I had always made my deposits and attended to all of the finances for the Vogue Dry Cleaning Company, Inc; on that date the District National Bank had my note secured by collateral or certain securities.

Thereupon it was stipulated that the copy of the note attached to the answer of the defendant Hamilton as Defendant's Exhibit "A" was a true copy of the note referred to, and the same was thereupon received in evidence with like effect as though it were the original. On the back of said note appeared the following notations, indicating payments on account of principal:

28	“\$12,000.00
Dec. 1, 1931	1,000.00
	\$11,000.00
Dec. 14, 1931	1,000.00
	10,000.00
Dec. 18, 1931	1,105.17
	8,894.83
Jan. 13, 1932	2,300.00
	6,594.83
Jul. 18, 1932	4,000.00
	2,594.83”

On the back of said note there also appeared the following notations indicating payments on account of interest:

“Interest paid November 30th, 1931, \$82, paying interest to November 30th, 1931.”

“On February 27th, 1932, \$122.77, paid on interest to February 29, 1932.”

“On May 31, 1932, \$101.18 paid covering interest to that date.”

“On August 29th, 1932, \$71.90 paid on interest to August 31, 1932.”

The note was stamped "District National Bank of Washington, D. C.," "endorsement canceled," and signed by H. W. Offutt, Vice President.

Thereupon it was stipulated that this note had been discounted either with the Reconstruction Finance Corporation or with some other bank and at that time it was endorsed by the District National Bank, and when it came back to the District National Bank the endorsement was canceled.

The witness thereupon resumed his testimony as follows:

The balance on this note on July 18, 1932 was \$6,594.83, and the interest was current and not in any respect in default; no demand had been made which had not been complied with, and no demand had been made for the substitution of collateral which had not been complied with.

On July 18, 1932, the stocks enumerated on the fact of the note were with the District National Bank as collateral and are still there.

In June of 1932, I spoke to Mr. Gockeler, Vice President of the District National Bank in regard to a rumor I had heard about the run on the Perpetual Building Association and asked his advice about the money Mrs. Goldenberg had in the Building Association, whether it was safe or not safe, and he told me at that time he did not know, but would inquire and let me know in a day or two. I went back
29 in a couple of days to see Mr. Gockeler and he said not to do anything at that time.

At that time Mrs. Goldenberg had money in the Oriental Building Association. A few days after that Mr. Gockeler called me at the desk and said "Goldie, why don't you let Mrs. Goldenberg take that out of the Building Association, and you take the collateral out of the bank," and I said that the collateral was more than the amount of the money, and he said that Mrs. Goldenberg can arrange to have the stock broker handle it. He said, "You are only getting 5-1/2 there and this will pay a whole lot more," and I asked him to arrange it.

He told me to have Mrs. Goldenberg draw \$4,000 out of the Building Association, and pay \$4,000 out on the note, and make arrangements with some broker to pay the difference and take up the collateral and put it in Mrs. Goldenberg's account.

I went home that evening and spoke to Mrs. Goldenberg, and she wanted to know if it was safe to pull the money out. I spoke to Mrs. Goldenberg that evening, and explained to her, and she said if it was safe that she would invest her money in that stock, and then she went to the Building Association and drew her money out and gave me the money, \$3,800, I think, I am not sure, and the cash I took to the bank and went to Mr. Gockeler, and Mr. Gockeler said, "Put it in your account at the bank and give me your check, and we will credit it on the stock." He said, "Go around and see Hibbs and make arrangement as to taking the stock out of here." I went to Hibbs, and they were very busy, and then I spoke to Mr. Cohen, the floor man, and we had arranged to pay the difference, \$2,700 or \$2,800 to take the stock out of the bank. I then went back to the District National Bank to Mr. Gockeler and told him.

They were going to pay the balance and take up the stock. Mr. Gockeler took me to the note teller and said, "Give Mr. Goldenberg a statement of interest due and amount due to date," and he went to the card box and pulled out the card and said, "We can't give him the stock," and he said there was a notation on it, "Do not release." I said, "What does that mean Chris?" That was Mr. Gockeler, and he said, "I don't know anything about this, I am sorry," and I said, "How about Mrs. Goldenberg's \$4,000, and he said, "I can't do anything about it now." I went to see him
30 two or three times to see what could be done about it, and nothing has been done to this day.

Mr. Gockeler was the Vice President of the bank and his duties were passing on notes and collateral and things like that. As far as I know he spent all of his business hours at the bank. I used to go there around noon and he was always there. He had a desk there and he handled my loans at the bank and some of my other transactions. He passed on loans and notes.

The Mr. Cohen I mentioned was with Stein Brothers and Boyce, who were stock brokers in this city. Mr. Cohen is now in Jerusalem, or somewhere in Europe. So far as I know the stock was never delivered either to me or Mrs. Goldenberg. It is still in the possession of the District National Bank or the Receiver of that bank. Since that time no payments have been made on account of this note.

The money that Mrs. Goldenberg had in the Building Association was her money. She had gotten it by saving money for twenty years, saving money for different things, principally some clothing and household effects, and presents I had given her, and what she had gotten from her family.

Cross Examination.

About \$3,800 of this money came from the Building Association, and Mrs. Goldenberg had the balance in cash. I think, but I am not positive I put the \$4,000 in the bank or the \$3,800, but I am under the impression I put the \$4,000 in bank.

So far as I can remember I did not personally owe the District National Bank any other money in July, 1932.

There was thereupon exhibited to the witness a note for \$15,000, dated September 12, 1932, payable to the District National Bank and signed by the Vogue Dry Cleaning Company, by Samuel Goldenberg, and he stated that he had signed the same on behalf of the Vogue Dry Cleaning Company and also identified his signature on the back of said note as an endorser thereof.

Q. Mr. Goldenberg, as of July 18, 1932, was there a similar note and a similar endorsement in the District National Bank? A. What do you mean by "similar"?

Q. I mean the same amount. A. All of them I think there were. I am not sure about it. I think it was under the name of the Vogue Dry Cleaning Company note.

31 Q. With your endorsement? A. Yes, sir.

In 1932 I was president of the Vogue Dry Cleaning Company and owned fifty per cent of the stock; the other fifty per cent was owned by M. Y. Needle; that corporation went into bankruptcy in November or October, 1932.

I can not remember word for word the conversation which I had with Mr. Gockeler at the bank in June or July, 1932, but I have stated about the substance of the conversation.

Q. In addition to paying off the so-called personal note, the \$6,500 note, was there any suggestion made by you and Mr. Gockeler that you would use any of the proceeds on a loan of this stock to do anything else? A. I had no right in the stock. The stock was Mrs. Goldenberg's when she paid the \$4,000. I had no right to use it for anything at all. That was the understanding. All of the collateral was to be turned over to Mrs. Goldenberg's account.

The value in July, 1932, was approximately \$8,500. The balance of the value of that stock was Mrs. Goldenberg's. There was no understanding and I did not suggest, and Mr. Gockeler did not suggest in addition to paying off the personal loan, there would be additional money borrowed which would be used in the business of the Vogue Dry Cleaning Company.

The witness thereupon identified his signature on the following statement:

“January 3, 1933.

“Samuel Goldenberg states as follows:

“At about the time the Bank at Fifth and H Streets, N. W., was in financial difficulties, I went to see Mr. Chris Gockeler at the District National Bank and inquired from him his opinion as to the safety of the various building associations, with special reference to the Oriental Building Association in which my wife, Carrie Goldenberg, had an account in her name of about \$5,000. Mr. Gockeler states that of course he did not like to express an opinion as to the financial stability of another institution, notwithstanding the fact that I handed him at that time a statement of the Oriental Building Association; Gockeler did say, however, that I must know that there had been a rather serious
32 run on the Perpetual Building Association and that he, Gockeler, thought that since Mrs. Goldenberg was only getting five per cent (5%) on her money in the Building Association, while I was paying six per cent (6%) on my collateral loan of \$7,000 held by the District National Bank, that it would be a wise thing for me to persuade Mrs. Goldenberg to permit me to use the money which she had on deposit in the Building Association to curtail my note at the District National Bank; that if I would make this curtail I could probably arrange a collateral loan through a stock broker in excess of what I owed the bank, the bank having expressed an unwillingness to increase my then existing loan; that I would thereby be able to secure additional money for use in my business which he, Gockeler, understood was necessary at that time. Mr. Gockeler suggested that I call upon Hibbs and Company and try and arrange the matter. Mr. Gockeler specifically stated that if Mrs. Goldenberg would allow me to use the money in the Building Association to curtail my note as suggested, the

bank would deliver the collateral held by it if the remaining unpaid balance of the note was paid.

"I proceeded in accordance with the suggestions and agreement of Mr. Gockeler, withdrew the money from the Building Association and paid \$4,000 on the loan, reducing the same to about \$2,600. I then endeavored to make arrangements with Hibbs and Company but was unsuccessful. I discussed the matter with Stein Brothers and Boyce and made the necessary arrangements with them to make the loan and then proceeded to the bank to secure the release of the collateral held by it.

"Mr. Gockeler on this visit called the Note Teller of the bank and asked him to bring the collateral to his desk. The Note Teller did so. When the Note Teller presented the collateral to Mr. Gockeler he called his attention to a notation thereon to the effect that the collateral was not to be released as it was being held as security for my endorsement on other loans held by the District National Bank.

"Mr. Gockeler thereupon advised me that he was sorry but he could not deliver the collateral.

(Signed) "Samuel Goldenberg."

Q. Now, Mr. Goldenberg, in view of that statement, does that refresh your recollection as to whether anything was said about getting some additional money to be used
33 in your business? A. I don't remember, but I don't think so. I don't think I was trying to get any money for my business on my collateral.

Q. You recall what the statement said? A. I recall what the statement said.

Q. Do you think that statement is incorrect? A. I don't recall the details, but I do not think I was borrowing any money for my business. If the money was to be borrowed, it was borrowed by the Vogue Dry Cleaning Company.

Mrs. Goldenberg drew the money from the Building Association; I do not know the exact date; I haven't the record here; the check was made out to Carrie Goldenberg and she endorsed it over, and I took it to Mr. Gockeler and he said put it in the bank and make my own check out, or run it through in the customary way, and I did; I think I paid with a counter check for the bank or Mr. Gockeler did not want Mrs. Goldenberg's check to go through.

Q. Now, this statement that was just read refers to an effort on your part at that time to obtain additional loans from the bank?

Mr. Koenigsberger: Just a moment; does it?

Mr. Clagett: "The bank having expressed an unwillingness to increase my then existing loan."

The Witness: That was the Vogue Dry Cleaning. The Vogue Dry Cleaning Company was trying to borrow money, not me.

By Mr. Clagett:

Q. Had you made an effort to borrow an additional personal loan? A. Additional, no, sir.

Q. So, when you refer to existing personal loans, you refer to the Vogue Dry Cleaning Company? A. The Vogue Dry Cleaning, not me personally.

I cannot recall whether in this conversation with Mr. Gockeler the financial condition of the Vogue Dry Cleaning Company was mentioned, but the Vogue Dry Cleaning has always been intermingled with me at the bank. We have been dealing there as I say, or we had been dealing there as I said about fifteen years.

The Vogue Dry Cleaning Company was solvent on July 18, 1932. I think it was solvent in June, 1932.

34 There was thereupon exhibited to the witness a document purporting to be a financial statement of the Vogue Dry Cleaning Company as of June 30, 1932, and the witness stated that that paper was supplied by him to the bank. The statement was thereupon offered in evidence.

Ralph Xander.

Direct Examination

I am assistant to the Secretary of the Oriental Building Association, which is a building association engaged in business in the District of Columbia, and have brought certain records of the building association with me.

There were thereupon handed to the witness two small books on the outside of which was printed "Oriental Building Association," and the typewritten words "Carrie Goldenberg," and the witness stated that these books were of a savings account between the Oriental Building Association and Carrie Goldenberg. The books were thereupon

offered in evidence, and the witness testified in regard thereto as follows:

It shows a balance as of July 1, 1932 and there generally was another \$10 payment made, so, in other words, there was a balance on the 18th of July—the withdrawal was made on the 17th of July, 1932, and there was then a balance of \$3,803.45. On the day after the withdrawal of the \$3,803 there was a balance left of \$3.45.

There were thereupon exhibited to the witness three sheets, being ledger accounts of the Association, and the witness testified that they corresponded with the books previously exhibited to him with the exception that the books start at an earlier date. These sheets were thereupon offered in evidence.

There was thereupon offered in evidence a signature card showing the account of Carrie Goldenberg, 3264 M Street, Northwest, dated July 8, 1912, and the witness stated that the account was older than that, that the first entry in the pass book was in 1908, but was transferred from another account before that, and the witness testified that the account was at least as old as the card.

There was thereupon exhibited to the witness a document which he stated was a voucher of the Oriental Building Association, drawn by the Oriental Building Association and payable to Carrie Goldenberg, July 18, 1932, in the amount of \$3,800. Said voucher was thereupon offered in evidence, the same being numbered 49,786, and being in the following form:

Washington, D. C., July 18, 1932, Pay to the order of Carrie Goldenberg, \$3800, Account 755, signed by Charles H. Buckman, President and Henry E. Clugman, Secretary, and purporting to be endorsed by Carrie Goldenberg.

The witness was thereupon requested to compare the signature on the signature card with the endorsement on the back of said voucher, and he stated that in his opinion said endorsement was the signature of Carrie Goldenberg, and that the Association acted on the assumption that it was a correct signature.

This voucher indicates that a withdrawal was made. The money was paid to her by check.

There was thereupon exhibited to the witness a check and the witness stated that it was a check drawn by the Treasurer of the Building Association to Carrie Goldenberg in

the amount of \$3,800, and that the same was endorsed by Carrie Goldenberg.

Mr. Koenigsberger: I offer this in evidence. It is No. A-5210, Washington, D. C., July 18, 1932, Oriental Building Association, No. 6, pay to the order of Carrie Goldenberg exactly \$3800, signed by Charles W. Schaeffer, Treasurer, and it is drawn on the Lincoln National Bank. It bears the endorsement, "Pay to the order of Samuel Goldenberg, Carrie Goldenberg," and below that it bears the endorsement of Samuel Goldenberg. It is endorsed with a rubber stamp, "Received payment through Washington, D. C. Clearing House, prior endorsement guaranteed, July 19, 1932, District National Bank," and it bears the perforation, "Paid July 19, 1932."

The witness thereupon identified the signature as that of Carrie Goldenberg.

Cross Examination.

We have a right to require thirty days notice of withdrawal but we have never used it in seventy-four years time.

36

Carrie Goldenberg.

Direct Examination

I am the plaintiff in this case and am the wife of Samuel Goldenberg who has testified previously; he is also known as Sam Goldenberg.

The witness thereupon identified her signature on the signature card which had been previously offered in evidence, and stated that her endorsement on the voucher previously offered in evidence was made in her handwriting, and that the check which had been offered in evidence was endorsed in her handwriting.

On and prior to July 18, 1932, I had money in the Oriental Building Association. I could not be sure just how much, but I know it was around \$4,000; that was my own money; at or about that time Mr. Goldenberg came home one evening and told me he had a conversation with the Vice President of the District National Bank, and he said that the Vice President suggested that if I would put up \$4,000 on the stock which the bank was holding in my husband's name as collateral, I could have the stock, make arrangements with a stock broker, and have the stock turned over to me. I

agreed to it and I went down to the Building Association and drew out the money I had there and gave it to Mr. Goldenberg, and asked him to take it to the District National Bank and make arrangements with the stock broker to have the stock put in my name. He told me he did that and I drew the money out of the Building Association; I signed the voucher and the check. I endorsed the check over to Mr. Goldenberg and told him to take it to the bank and make arrangements to have the stock put in my name. The stock was never delivered to me or for my account.

Cross Examination.

I got this money in the Building Association in amounts I had been saving for years. I always had extra money. I got presents, and Mr. Goldenberg always gave me a liberal allowance. I do not recall that I was ever an officer or a stockholder of the Vogue Dry Cleaning Company.

At the time I said Mr. Goldenberg had this conversation with me, about July 18, 1932, referring to his conversation
37 at the bank, I agreed to pay the \$4,000 in case he turned the stock over to me. Nothing was said to me by Mr. Goldenberg that he would get additional money to put in the Vogue Dry Cleaning Company. I do not think Mr. Goldenberg would make an arrangement without my consent to borrow additional money on this stock and put it in the business. I know that the market value of the collateral that Mr. Goldenberg had in the bank was more than \$4,000 in July, 1932. I knew I would have to make arrangements with a stock broker to pay the balance to the bank. In the bill which I signed in this case I stated that the total market value of the stock at that time was approximately \$9,000 and that at the time of the signing of the bill it was approximately \$11,000; the basis of this statement I got from Mr. Goldenberg.

The stock was to become entirely mine. I withdrew \$3,800 from the Building Association and \$4,000 was paid to the District National Bank; I gave Mr. Goldenberg the other \$200 out of the household money. I was not employed at that time, but I earned other money besides what was given to me out of renting rooms in my house. This house has been in my name ever since I was married—ever since we lived in Washington. It was given to me when Mr. Goldenberg and I married thirty-five years ago.

Redirect Examination.

I got this \$200 from boarders I had in the house at that time. It was given to Mr. Goldenberg in cash.

Thereupon the plaintiff rested.

38 And thereupon to maintain the issues on his part joined, the defendant Hamilton offered the following witnesses, who, being first duly sworn, testified in substance as hereinafter set forth:

Raymond Lochte.

Direct Examination.

I am employed as assistant to the Receiver of the District National Bank; in 1932 I was Assistant Cashier of that bank.

There were thereupon exhibited to the witness certain papers which he stated were liability sheet records of the District National Bank relating to the Vogue Dry Cleaning Company. He said that by the expression "liability sheet records" he meant that is a record of the note signed by the customer of the bank, that they owe that particular amount to the bank; that this particular sheet does not include the notes upon which he might be endorser.

This sheet shows that on June 10, 1932, the liability of the Vogue Dry Cleaning Company to the District National Bank, including principal and interest, was \$15,230.

My only connection with the account of the Vogue Dry Cleaning Company was as credit manager of the bank; I was not employed in the note department.

On July 18, 1932, the Vogue Dry Cleaning Company was indebted to the District National Bank in the amount of \$15,000, and Max Needle and Samuel Goldenberg were endorsers on that note on that date. This note and indebtedness has never been paid. The note of Samuel Goldenberg dated October 20, 1931, has not been paid, and the amount still owing on it is \$2,594.83, with interest from August 31, 1932.

Cross Examination.

The obligation of the Vogue Dry Cleaning Company which was in existence on July 18, 1932, was represented by a note of that Company which was not due in July, 1932, but became due on September 12, 1932. In July there was not any

interest in default on that note; the interest was payable at maturity; it was a straight unsecured promissory note;

39 Q. Was it substantially the same form except as to the due date of the note of June 10, 1932, "Ninety days after date we promise to pay to the District National Bank \$15,000 with interest at six per cent per annum until paid, payable at the District National Bank with attorney's fees in case the payment shall not be made at maturity? Is that on there? A. Yes, it was an identical note.

Q. And endorsed in the manner so described? A. Yes, sir.

C. J. Gockeler.

Direct Examination

At present I am Assistant Vice President of the Hamilton National Bank, and in July, 1932, I was one of the Vice Presidents of the District National Bank; I was with the District National Bank ten or fifteen years. I was familiar with the personal account of Mr. Samuel Goldenberg, and also the account of the Vogue Dry Cleaning Company with the District National Bank; I was a member of the Executive Committee and any loans that he would make would come before that Committee. I could not say exactly how long the loan of the Vogue Dry Cleaning Company had been in the bank, but my recollection is we made the Vogue Dry Cleaning Company a substantial loan when they built a new building. It was rather a large amount. Offhand, I should say it was \$40,000 or \$50,000, but it had been gradually reduced, and this note of the Vogue Dry Cleaning Company was endorsed by Mr. Needle and Mr. Goldenberg. I think Mr. Needle was a member of that Company. Mr. Goldenberg was an endorser on the note of the Vogue Dry Cleaning Company. In July, 1932, the amount of the indebtedness of the Vogue Dry Cleaning Company was around \$15,000, endorsed by Mr. Goldenberg and Mr. Needle. In July, 1932, the approximate amount of the Goldenberg note was around \$6,500.

Q. Now, Mr. Gockeler, in the month of July or June, 1932, did you agree with Mr. Samuel Goldenberg that if \$4,000 was paid on the indebtedness of Samuel Goldenberg to the District National Bank that you would deliver to Mr. Goldenberg or his agent the securities held by the bank as col-

lateral for Mr. Samuel Goldenberg's note upon the payment of the balance of that note? A. No, sir.

I don't think I ever met Mrs. Goldenberg.

40 I did not make such an agreement with Mr. or Mrs. Goldenberg at any time. I can tell you exactly what happened. Mr. Goldenberg first came to my desk either the end of June or the early part of July, 1932, and he just talked to me in general with regard to the Building Associations in the District of Columbia. My recollection is he said a member of his family had some shares in the Building Association, and he was fearful about the safety, and I think he said it was one of the German Loan associations, and my answer was I knew quite a little about these German loan associations, and they were generally good, but, if he would bring me a statement of this Building Association, I would be glad to look it over and give him what advice I could. I would say a week or so after that he came in and brought a statement of this Association, and I looked over it and told him it looked to me like it was all right, but I said, "If you have any doubt about that money you have in the Building Association or a member of your family, why don't you—you are paying 6 per cent on your note, and why don't you withdraw that amount and credit it on your note. You are only getting 5 per cent, and that will relieve you of any anxiety regarding your money."

Thereafter, I would say—no, I could not say exactly whether it was the day he made the payment on the note, but either at that time, or shortly after that time he came to my desk again, and we discussed his affairs, and first one thing and another, and having in mind that he needed money in his business, I suggested to him if he could make an arrangement with Mr. Evans whereby he could have that collateral, and make a collateral loan somewhere else and he wanted to know where, and I said if he could make arrangements with Mr. Evans to obtain that money and make a large loan, he probably would have some money left for the needs in his business.

Then he asked me if a brokerage house would make collateral loans, and my answer was I believed they would. That was around we will say July 18th or 20th. Then the next I heard from Mr. Goldenberg was I would say it was at least two days afterwards when he came in the bank and asked about paying the rest of his money on his note and

getting his collateral, and I sent him over to the Vice President that had charge of this collateral, and this Vice President I am sure or I think I remember distinctly told him—

Mr. Koenigsberger: In your presence?

41 The Witness: I am not exactly sure whether I went to the office with him or not, but I do know there was some question about giving Mr. Goldenberg the collateral. Just exactly whether that discussion was in my presence or not I don't know but, what I heard at that time—I don't know whether I should state that.

The Court: Do not state what you heard.

At the time of these conversations in June or July, 1932, I was familiar with the other indebtedness. There might have been collateral on the note of the Vogue Dyr Cleaning Company at that time. If there was collateral it would be the practice to put it on the ledger. The liability sheets of 1929, 1930, 1931 and 1932 of the Vogue Dry Cleaning Company do not show any collateral.

Cross Examination.

Mr. Evans was President of the bank at that time, and I was one of the four vice presidents and was on the Executive Committee. I arranged for loan—I would send them to the Executive Committee. I would present these various matters to the Executive Committee where they were material loans; some loans I would make myself up to a reasonable amount. We had a sort of a gentlemen's agreement in the bank which covers the amount of the loan and how we arrived at that amount. None of the officers would make a loan of a thousand dollars or more without consulting some other officer, or presenting it to the Executive Committee.

My recollection is that when Mr. Goldenberg came to me to pay the collateral on this collateral note, I sent him to Mr. Offutt, the Vice President that had charge of the collateral. The collateral was not at the teller's but was down stairs in the vault. I did not ask the teller to deliver the collateral. The teller would not have charge of the collateral. Mr. Offutt literally had charge of the handling of the collateral and kept it in a separate vault that he had entrance to and I had not, but the collection teller had the note. The record of the collateral would be on the note. I the Teller's name at that time was Mr. Rabbitt or Mr. Lochte.

Mr. Rabbitt is in Washington, employed at the Hamilton National Bank. I do not recall any other Tellers at that time that might have handled this transaction. I
42 did not send for the collateral to be brought to my desk, and I did not send for the card showing that the collateral should be brought to my desk.

Joshua Evans.

Direct Examination.

I am Vice President of the Hamilton National Bank and in 1932 I was President of the District National Bank. As such President I was familiar with the loans of Mr. Samuel Goldenberg and of the Vogue Dry Cleaning Company. I did not know of any agreement having been made in 1932 with Mr. Samuel Goldenberg whereby upon payment of his personal note the collateral securing that note would be restored to him. The loan of Mr. Samuel Goldenberg was brought to my attention in 1932 in this way:

The loans of the Vogue Dry Cleaning Company and Mr. Goldenberg were given special attention because the Vogue Dry Cleaning Company loans the endorsement of Mr. Goldenberg, and for that reason they were giving special attention to them, as the Vogue Dry Cleaning Company loan was not particularly strong at that time.

Mr. Gockeler was not a member of the Executive Committee. Naturally we would call in Mr. Offutt and Mr. Gockeler should we have need to consult them, or inquire of them as to the particular loans.

Q. Would Mr. Gockeler in July of 1932 have had authority to return the collateral to Samuel Goldenberg upon the payment of the face amount of that note? A. Mr. Simon: We object, if the Court please. I do not think Mr. Evans can tell what authority he had. There is some evidence he did say that he tried to deliver the collateral, or he would return the collateral.

The Court: If he agreed to do it, I think he would have that implied power, but I think the authority would have to be shown in some other way.

Mr. Clagett: I am not showing the authority, but the lack of authority. This is the President of the bank at the time.

The Court: I think he would have the implied authority in view of his own testimony as to what business he had in

charge, and I think certainly a man that dealt with the bank would have a right to rely upon that authority if he made an agreement. I sustain the objection. I think perhaps you can show his authority and then if I should decide in favor of the plaintiff, I would have to decide whether she had a lien for the amount that she paid. Let him state what his authority was. I will let it in for the present.

The Witness: Mr. Gockeler would not have the authority.

By Mr. Clagett:

Q. Why? A. Because in cases where loans were given special consideration, and a collateral loan had an equity in it, and the maker of that loan also had another liability to the bank, we would not deliver the collateral without satisfying the other liability.

Mr. Clagett: That is all.

Cross Examination.

I can not say that the loan to the Vogue Dry Cleaning Company upon which Mr. Goldenberg was an endorser was quite some time prior to the collateral note involved in this case.

I first became associated with the District National Bank in 1925; Mr. Gockeler was there prior to my association, as was also Mr. Harper. In July, 1932, the bank was collecting all of its loans wherever possible; it was not pressed for cash.

Be it further remembered that the foregoing is the substance of all the testimony taken in the above entitled cause, and that the foregoing narrative statement of said testimony is hereby allowed and approved, and the same is hereby ordered filed as a statement of the evidence to be included in the record on appeal in said cause, this 8th day of December 1936.

JENNINGS BAILEY (Seal)
Justice.

44 Endorsement: Equity No. 58,093 Carrie Goldenberg, Plaintiff, vs. Justus S. Wardell, as Receiver of District National Bank of Washington, Defendant. Statement of Evidence. Law offices of Simon, Koenigsberger &

Young, 340 Woodward Building, 1426 H Street N. W.
Washington, D. C.

45 In the District Court of the United States
for the District of Columbia

Equity No. 58,093

CARRIE GOLDENBERG, *Plaintiff*,

VS.

JUSTUS S. WARDELL, as Receiver of DISTRICT NATIONAL BANK
OF WASHINGTON, *Defendant*.

Stipulation

It is hereby stipulated by and between the attorneys for plaintiff and defendant in the above-entitled cause that the following additions shall be made to the statement of evidence heretofore submitted to the Court in behalf of plaintiff:

On Page 8, at line 4, after the sentence reading, "The statement was thereupon offered in evidence," insert the following:

46 "The first page of this statement containing figures was headed 'Vogue Dry Cleaning Company, Financial Statement, June 30, 1932' and was on the paper of John Berg, C.P.A. (N.C.), National Press Building, Washington, D. C. Such statement showed petty cash in black of \$150, cash in bank in red \$1,407.71, and total current assets of \$30,904.96. The statement also showed current liabilities of \$58,177.38. It also showed total fixed assets of \$396,928.15, including plant and equipment less depreciation reserve of \$280,801.36 and good will of \$113,785. The statement showed fixed liabilities of \$146,400, including mortgage payable of \$145,000. Under the heading 'Net Worth' the statement showed capital stock of \$200,000, surplus of \$35,081.82, and net loss for the 6 months in red of \$11,826.09, or a total net worth of \$223,255.73."

SIMON, KOENIGSBERGER & YOUNG
Attorney for Plaintiff

BRICE CLAGETT
Attorney for Defendant.

The foregoing addition to the statement of evidence in the above-entitled cause is hereby approved this 10th day of December, 1936.

JENNINGS BAILEY (Seal)
Justice.

Endorsed on cover: No. 6885. Carrie Goldenberg, Appellant, vs. Justus S. Wardell, as Receiver of District National Bank of Washington, and Samuel Goldenberg. United States Court of Appeals for the District of Columbia Filed Dec 14 1936 Moncure Burke, Clerk.

UNITED STATES
COURT OF APPEALS FOR THE
DISTRICT OF COLUMBIA

FILED MAR 10 1937

**United States Court of Appeals
for the District of Columbia**

Robert Burke
CLERK

OCTOBER TERM, 1936

No. 6885

CARRIE GOLDENBERG, *Appellant*,

vs.

JUSTUS S. WARDELL, AS RECEIVER OF DISTRICT NATIONAL
BANK OF WASHINGTON, *et al.*

BRIEF FOR APPELLANTS.

MORRIS SIMON,
LAWRENCE KOENIGSBERGER,
EUGENE YOUNG,

Attorneys for Appellant.

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United States Court of Appeals for the District of Columbia

OCTOBER TERM, 1936

No. 6885

CARRIE GOLDENBERG, *Appellant*,

vs.

JUSTUS S. WARDELL, AS RECEIVER OF DISTRICT NATIONAL
BANK OF WASHINGTON, *et al.*

BRIEF FOR APPELLANTS.

STATEMENT OF THE CASE.

This is an appeal by Carrie Goldenberg, plaintiff below, from a decree of the Court below in an equity suit, entered after a trial, in which she sought to establish her rights to certain securities in the hands of the Receiver of the District National Bank of Washington.

The decree awarded her a lien on the securities but denied her right to the securities themselves (R. 19-20).

The defendants below were Norman R. Hamilton, as Receiver of District National Bank of Washington, and Samuel Goldenberg. After the decree was signed Hamilton resigned as Receiver, whereupon the appellant Justus S. Wardell was appointed to succeed him and was substituted as a party defendant (R. 21).

On and prior to July 18, 1932, Samuel Goldenberg, the husband of the plaintiff, was indebted to the District National Bank of Washington in the sum of \$6,594.83, represented by his promissory note payable to the order of the Bank on demand, with interest at 6 per cent, collaterally secured by a bond and certain stocks (R. 2, 6, 7, 11-14, 25) of the market value at that time of approximately \$8,500 (R. 5, 29).

The note, which will be found on pages 11-13 of the Record, is hereinafter (*infra* pp. 11-14) set out in full.

This note was dated October 20, 1931, and had been originally for \$12,000 but between its date and July 18, 1932, had been reduced by four successive curtails to \$6,594.83 (R. 13-14, 25).

On June 10, 1932, Vogue Dry Cleaning Company, a corporation, one-half of the stock whereof was owned by Samuel Goldenberg, and the other half whereof was owned by M. Y. Needle (R. 28) was also indebted to the Bank in the amount of \$15,230, including principal and interest. On July 18, 1932, the Vogue Dry Cleaning Company was indebted to the Bank in the amount of \$15,000 represented by its promissory note, endorsed by Needle and Samuel Goldenberg, dated June 10, 1932, and payable 90 days after date, maturing September 12, 1932 (R. 35). This note represented the balance of an indebtedness of \$40,000 or \$50,000 of the Vogue Dry Cleaning Company to the

Bank incurred March 3, 1927, which indebtedness was represented by the note of that Company, endorsed by Needle and Samuel Goldenberg, upon which curtails had been made from time to time and the several balances on which had been successively represented by the notes of the Company, likewise endorsed by Needle and Samuel Goldenberg before delivery thereof to the Bank (R. 9, 35-36). In July, 1932, there was no interest or principal in default on this note (R. 35-36) and it was renewed when it matured on September 12, 1932, by means of a new note likewise endorsed (R. 28).

The plaintiff, Carrie Goldenberg, had had a deposit account with the Oriental Building Association continuously since 1908, and the balance to her credit therein on July 18, 1932, was \$3,803.45 (R. 32). The money in this account represented her savings out of allowances made to her by her husband, gifts, and revenues derived from the home in which she and her husband lived, which belonged to her, having been given to her by her husband when they were married thirty-five years previously (R. 28, 34).

In June or July, 1932, Samuel Goldenberg, the husband of the plaintiff, became apprehensive in respect of the plaintiff's money in the Building Association, as there had recently been a run on another building association, and he asked the advice of Christian J. Gockeler, a Vice-President of the District National Bank, with whom all of his transactions with the Bank had theretofore been conducted (R. 26, 27, 37). Mr. Gockeler said he would inquire and let Mr. Goldenberg know in a day or two if Mr. Goldenberg would bring him a statement of the Association (R. 26, 27, 37). A few days thereafter Mr. Goldenberg brought in a statement of the Association. Mr. Gockeler looked over the statement and told Mr. Goldenberg it looked all right to him,

but he suggested that Mr. Goldenberg have Mrs. Goldenberg, the plaintiff, take the money out of the Building Association and apply it to Mr. Goldenberg's indebtedness to the Bank, pointing out to him that Mrs. Goldenberg was receiving only 5 per cent on her money, while Mr. Goldenberg's note bore interest at 6 per cent (R. 26, 37).

There is an apparent but not a real conflict in the testimony as to what was said at this time with reference to the collateral for Mr. Goldenberg's note. Mr. Goldenberg testified that Mr. Gockeler said to him, "Goldie, why don't you let Mrs. Goldenberg take that out of the Building Association and you take the collateral out of the Bank," that thereupon Mr. Goldenberg said that the collateral was more than the amount of the money, and Mr. Gockeler then told Mr. Goldenberg to have Mrs. Goldenberg draw \$4,000 out of the Building Association and pay \$4,000 out on the note, and make arrangements with some stockbroker to pay the difference and take up the collateral and put it in Mrs. Goldenberg's account (R. 26). Mr. Gockeler, testifying for the defendant, was asked on this point only whether, in the month of July or June, 1932, he agreed with Mr. Samuel Goldenberg that if \$4,000 was paid on the indebtedness of Samuel Goldenberg to the Bank, he [Mr. Gockeler or the Bank] would deliver to *Mr.* Goldenberg or *his* agent the securities held by the Bank as collateral for Mr. Goldenberg's note upon the payment of the balance of that note, to which he replied "No." He was not asked whether there was any agreement to deliver the stock to *Mrs.* Goldenberg or *her* agent (R. 37-37). He did testify, however, that Mr. Goldenberg asked him if a brokerage house would make collateral loans, to which he replied that he believed they would (R. 37), thereby admitting that there was a conversa-

tion in regard to taking the collateral out of the Bank, as otherwise there would have been no point in discussing the question of whether a stockbroker would make an advance on the same.

Thereafter, Mr. Goldenberg discussed the matter with Mrs. Goldenberg and agreed with her that if she would give him \$4,000 of her funds for the purpose, he would pay this amount to the Bank, arrange with a firm of stockbrokers to advance the balance of his indebtedness to the Bank thereafter remaining, and thereafter carry the account for Mrs. Goldenberg's account (R. 27, 33-34). Pursuant to this arrangement, Mrs. Goldenberg, on July 18, 1932, withdrew \$3,800 from her account in the Building Association, which amount was paid to her by means of the check of the Building Association payable to her order. She endorsed the check to the order of Samuel Goldenberg and delivered it to him, together with \$200 in cash, which \$200 she had gotten from boarders in the house (R. 27, 31-33, 34). Mr. Goldenberg took the check and the money to the Bank and, at Mr. Gockeler's request, deposited the same in the District National Bank, and thereupon drew his check for \$4,000 and gave it to the Bank, which credited it to his note (R. 25, 27, 33).

Mr. Goldenberg then arranged with Stein Brothers & Boyce, stockbrokers in Washington, to have them pay the Bank the balance thereafter remaining on his note and take the stock out of the Bank (R. 27). After these arrangements had been completed, Mr. Goldenberg reported that fact to Mr. Gockeler. Mr. Gockeler took Mr. Goldenberg to the note teller and requested him to give Mr. Goldenberg a statement of the amount due to date, with interest. The note teller got out Mr. Goldenberg's card and said there was a notation on it, "Do not release." Mr. Goldenberg said, "What does

that mean, Chris?" [meaning Mr. Gockeler] and the latter said, "I don't know anything about this, I am sorry." Mr. Goldenberg said, "How about Mrs. Goldenberg's \$4,000?" and Mr. Gockeler said, "I can't do anything about it now." Mr. Goldenberg went to see Mr. Gockeler two or three times to see what could be done about it, but nothing was ever done about it (R. 27). The stock was never delivered to Mrs. Goldenberg, or for her account (R. 34), and is now in the possession of the Receiver (R. 8).

Although Mr. Gockeler, who at the time was a Vice President of the Bank and a member of its Executive Committee (R. 36), Mr. Lochte, who then was Assistant Cashier (R. 35), and Mr. Evans, who then was the President (R. 39), testified for the defendant, none of them attempted to give any explanation or state the reason why this collateral was thus withheld. The defendant Hamilton, in his answer, claimed to be entitled to hold the collateral until both the balance of the indebtedness represented by the note of Samuel Goldenberg, and a note of the Vogue Dry Cleaning Company for \$15,000, endorsed by Needle and Samuel Goldenberg, and dated September 12, 1932, were fully paid (R. 10), but, of course, the note of the Vogue Dry Cleaning Company dated September 12, 1932, was not in existence at the time of the transactions of July 18, 1932. On July 18, 1932, the Bank held another note of the Vogue Dry Cleaning Company, similarly endorsed, but this note was not in any respect due or in default on July 18, 1932, and was curtailed and renewed subsequently, on September 12, 1932 (R. 10, 28, 35-36).

On December 7, 1933, the Comptroller of the Currency of the United States, having determined that the Bank was insolvent, appointed the defendant Hamilton Receiver thereof (R. 4, 8).

The Court, after hearing the testimony, entered a decree awarding the plaintiff a lien in the amount of \$4,000, with interest, on the securities mentioned and referred to in her Amended Bill in the hands of the defendant Hamilton, as Receiver, or such other securities as he may have in substitution therefor, and directed the Receiver, forthwith to pay said sum, with interest, to her; and decreed that upon payment of said sum, with interest, the Receiver, shall be entitled to hold said securities free of any claim or lien of the plaintiff thereto; and denied the other relief prayed (R. 19-20).

The plaintiff appealed from this decree and this is the appeal now before the Court.

Subsequently Mr. Hamilton resigned as Receiver and the appellee Justus S. Wardell, was appointed in his stead, and on July 10, 1936, was substituted for him as a party to the litigation (R. 21).

ASSIGNMENT OF ERROR (R. 21-22).

The Court erred in not holding and decreeing that the plaintiff was entitled to have delivered to her the securities mentioned and described in the Bill of Complaint in the possession of the defendant Hamilton, upon payment of the amount owing on the note of the defendant Goldenberg.

ARGUMENT AND AUTHORITIES.

THE AGREEMENT IN REGARD TO THE COLLATERAL WAS MADE AS CLAIMED BY THE PLAINTIFF.

Although there were no specific findings of fact by the trial Judge, the fact that he signed the decree which he did sign, awarding the plaintiff, Mrs. Goldenberg,

a lien on the collateral for the amount of her money paid to the Bank, is equivalent to a finding that the money paid to the Bank was her money, was known to the Bank to be her money, and was paid under the agreement claimed by her, and testified by her and her husband to have been made. Indeed, the fact of the making of the agreement was not denied by Mr. Gockeler or by any other witness. As above pointed out, Mr. Gockeler was never asked whether he made an agreement such as that testified to by Mr. Goldenberg, namely, that upon payment of the \$4,000 and the subsequent payment of the balance on the Samuel Goldenberg note, the collateral was to be turned over to *Mrs.* Goldenberg or to a firm of stockbrokers for *her* account, but on this point he was asked only whether he ever made an agreement that upon the payment of Mr. Goldenberg's indebtedness he would deliver to *Mr.* Goldenberg or *his* agent the securities involved (R. 36-37).

MR. GOCKELER HAD THE ACTUAL OR AT LEAST THE OSTENSIBLE AUTHORITY TO MAKE THE AGREEMENT.

Mr. Gockeler was one of the Vice Presidents of the Bank, and one of the executive officers in charge of its affairs. He was a member of its Executive Committee (R. 38). It is believed that this Court will take judicial notice of the fact that in modern times many officials of banks, with large authority, are designated vice presidents, although their duties and authority come not from the fact that they are vice presidents, which term, if literally construed, would mean that they have no powers or duties whatever, save in the event of the death, resignation, disability or absence of the president, but are functionaries of the bank, with power derived from their employment, as distinguished from their office.

Mr. Goldenberg testified without contradiction that Mr. Gockeler's duties were passing on notes and collateral and "things like that"; that as far as Mr. Goldenberg knew, Mr. Gockeler spent all of his business hours at the bank, where he had a desk, and handled Mr. Goldenberg's loans at the bank and some of his other transactions, including passing on loans and notes (R. 27). Mr. Gockeler testified that he had been with the Bank for ten or fifteen years and was one of its Vice Presidents and a member of the Executive Committee, with power to make loans up to a certain amount, and with power to make loans for more than \$1,000, after consulting some other officer or presenting it to the Executive Committee (R. 36, 38). Mr. Evans, the President of the Bank, testified that Mr. Gockeler had been with the Bank at least since 1925 (R. 40). He was asked whether Mr. Gockeler in July, 1932, would have had authority to return the collateral to Samuel Goldenberg upon payment of the face amount of the note, and stated that Mr. Gockeler would not have the authority (R. 39-40), but this was merely a conclusion of law on the part of Mr. Evans.

"A corporation can only act by agents, and its duly elected officers are within the scope of their respective duties, its agents to deal with third parties. Their duties may be prescribed or limited by the charter of the incorporation or by by-laws and regulations of the body corporate; but in the absence of specific limitations brought home to the knowledge of those who deal with them, or which those who deal with them are bound to take notice, the officers of a corporation, as its agents, are authorized to bind the corporation to third parties so long as they act within the ordinary scope of their duties. While the board of directors or trustees or by whatever name it may be called, is the

usual governing body of all private corporations and entitled to direct and control all its business, great or small, and to give direction to its other officers, yet the president and other officers, and not the board of directors, are those who are usually brought into contact with third parties in the conduct of the business of the organization; and custom and usage, and the necessities of the social order, demand that these executive officers should be regarded as entitled to bind the organization in all matters which such organizations are accustomed to transact through such officers.”

Russell v. Washington Savings Bank, 23 App. D. C. 398, 408.

“The officers are the representatives of the corporation, charged with dealing with others, and persons dealing with them have the right to assume the validity of their actions, in respect of a matter within their power and authority.”

Crook v. International Trust Co., 32 App. D. C. 490, 510.

“Where a party deals with a corporation in good faith, the transaction is not ultra vires, and he is unaware of any defect of authority or other irregularity on the part of those acting for the corporation, and there is nothing to excite suspicion of such defect or irregularity, the corporation is bound by the contract, although such defect or irregularity in fact exists. If the contract can be valid under any circumstances, an innocent party has a right to presume their existence, and the corporation is estopped to deny them. * * *”

Eichberg v. United States Shipping Board Emergency Fleet Corporation, 51 App. D. C. 44, 52, citing *Merchants' Bank v. State Bank*, 10 Wall. 604, 605.

EVEN IF THERE HAD NOT BEEN THE AGREEMENT WITH MR. GOCKELER, THE BANK WOULD NOT HAVE THE RIGHT TO WITHHOLD THE COLLATERAL AFTER PAYMENT OR TENDER OF PAYMENT OF THE FULL AMOUNT OF THE GOLDENBERG NOTE.

The defendant Hamilton adduced no testimony to explain the action of the Bank in refusing to release the collateral on July 18, 1932. In his Answer, he claimed the right to hold the collateral as security for the Vogue Dry Cleaning Company note, on which Needle and Mr. Goldenberg were endorsers, dated September 12, 1932, but, of course, no such right could have been claimed in respect of that note on July 18, 1932, as it was not then in existence.

However, if this Court permits it to be contended here, for the first time, that the Bank on July 18, 1932, had the right to hold the collateral as security for the Vogue Dry Cleaning Company note, endorsed by Needle and Mr. Goldenberg, dated June 10, 1932, or that it thereafter or that its Receiver now has the right to hold the collateral as security for the Vogue Dry Cleaning Company note dated September 12, 1932, we respectfully submit that no such right at any time existed and does not now exist. The note of the Vogue Dry Cleaning Company was in the ordinary form of a promissory note and conferred no right to hold as collateral therefor any security whatever (R. 11-13). Mr. Goldenber's note was of the following tenor (R. 11-13):

\$12,000.00 Washington, D. C., October 20th, 1931
On Demand after date for value received, the undersigned promises to pay to District National Bank or order

AT THE DISTRICT NATIONAL BANK OF WASHINGTON
the sum of Twelve Thousand & 00/100 Dollars
with interest at the rate of Six per centum per

annum, said interest payable as the holder hereof may demand, having deposited herewith and pledged as collateral security for the payment of this and any other liability of the undersigned to the holder hereof, the following property, to wit:

[Here was inserted a list of the collateral.]

the market value of which is now \$..... and it is understood and agreed by the undersigned as follows:

FIRST. That upon demand by the holder of this note he will at the absolute option of said holder, either deposit additional collateral security to the satisfaction of the holder, or pay on account of this note such cash sum as the holder may consider equivalent to any depreciation of said collateral below the value above fixed.

SECOND. That the collateral herewith pledged, including any and all additions thereto or substitutions therefor, together with any and all other securities and property in the possession of the holder (belonging to any of the parties liable hereon), whether pledged or left with the holders hereof for collection or safekeeping, shall be held as one general collateral for the whole or any part of this, any or all obligations due, or hereafter to become due by the undersigned to the said holder.

THIRD. That if default be made in any of the above agreements, this note and any and all other obligations and liabilities of the undersigned to the holder hereof may, at the option of the holder, become immediately due and payable as though they, any or all of them, had matured.

FOURTH. Upon default in payment of the principal hereof or interest thereon, as herein provided, or upon the non-performance by the undersigned of any of the agreements herein contained, or in the event of an application for the appointment of a receiver, filing of a petition in bankruptcy, or a general assignment by or against

the undersigned or any party liable hereon, or of any other act of insolvency however indirect, the holder hereof is authorized and empowered at its option, with or without notice, to sell at public or private sale, or on the stock exchange and deliver to the purchaser thereof the whole or any part of said collateral and any additions thereto or substitutions therefor, free of all trusts and claims, the proceeds of such sale to be applied to the payment of this, and any and all obligations due, or which may become due, by the undersigned to the holder, with interest, after deducting all legal and other costs of collection, sale and delivery. Should the holder hereof take any proceeding with respect to the collection of this note, or the holding or sale of said collateral, or any part thereof, the said holder shall be paid such additional costs and expenses as may be caused thereby, including reasonable counsel fees.

Upon any sale by virtue hereof, the holder may purchase the whole or any part of the aforesaid collateral discharged from any right of redemption, which is hereby expressly waived and released.

FIFTH. Upon the failure to comply with any of the agreements herein set forth, the holder may, at his option, appropriate and apply to the payment of this note, or any other direct or contingent obligations or liabilities of the undersigned to said holder, whether now existing or hereafter arising, any and all moneys in the hands of said holder on deposit or otherwise to the credit of, or belonging to the undersigned, whether this note or any other of said obligations or liabilities are due or not.

SIXTH. To remain personally liable for any deficiency in the collateral security for the payment of this note and any and all obligations of the undersigned and to pay reasonable counsel fees and costs incurred by the holder in connection

therewith, waiving any benefit, exemptions or privileges under any law now or hereafter to be in force.

No.— SAM GOLDENBERG,
Address 300 Eye Street N. E.

The only provisions of this note which furnish any shadow of pretext for holding the collateral pledged therefor as security for the note of the Vogue Dry Cleaning Company, a corporation, upon which Needle and Mr. Goldenberg were joint endorsers, and which note was not due nor in any respect in default on July 18, 1932, or at any time thereafter, are in the recital as to the securities being “pledged as collateral security for the payment of this and any other liability of the undersigned to the holder hereof” (*ante*, p. 12); and Paragraph Second to the effect that the collateral therewith pledged “shall be held as one general collateral for the whole or any part of this, any or all obligations due, or hereafter to become due by the undersigned to the said holder.” (*ante*, p. 12.)

Neither of these provisions gives the Bank the right, after payment or tender of the amount of the note itself, to hold the collateral as security for Mr. Goldenberg’s contingent liability, jointly with Needle, as endorser, of the Vogue Dry Cleaning Company note.

The engagement of an endorser of a promissory note is that it shall be paid according to its tenor and that if it be dishonored and the necessary proceedings on dishonor be duly taken, he will pay the amount thereof to the holder.

D. C. Code, Tit. 22, §§ 96, 97.

No obligation or liability arises from the fact of endorsement unless and until the note matures and is dishonored and it is no liability then, unless the pro-

ceedings necessary to fix liability have been taken or waived.

Where property is pledged for a specific debt or liability, the pledgee has no lien upon it for the payment of other claims and the collateral property so pledged cannot be appropriated by the pledgee to any other debt or liability of the pledgor, regardless of his insolvency, unless such was the intention of the parties.

Reynes v. Dumont, 130 U. S. 354, 390.

Armstrong v. Chemical National Bank, 41 F. 234.

In re Haynsworth, 34 F. (2) 334.

The question is one of the intention of the parties as determined from the whole transaction between them, and in case of doubt the contract will be construed in favor of the pledgor.

Gillett v. Bank of America, 160 N. Y. 549, 554.

In the case at bar the credit extended by the Bank to the Vogue Dry Cleaning Company was not to any extent based on the collateral deposited by Mr. Goldenberg to secure his note, his note being dated October 20, 1931 (R. 11), whereas the original loan to Vogue Dry Cleaning Company had been made on or about March 3, 1927 (R. 9).

Mr. Goldenberg's obligation on his note was his sole obligation, whereas his liability as endorser was a joint liability with Needle, his co-endorser and the owner of one-half of the stock of the Vogue Dry Cleaning Company, Mr. Goldenberg being the owner of the other half; and the note of the Vogue Dry Cleaning Company having been endorsed by Needle and Mr. Goldenberg prior to the delivery thereof to the Bank (R. 9).

In *Heffner v. First National Bank*, 311 Pa. 29, Margaret Heffner and A. M. Heffner were co-makers of a

note for \$2,000 dated December 2, 1929, payable to the First National Bank of Huntingdon. The note was secured by collateral and recited that the makers had "deposited as collateral security for the payment of this or any other liability or liabilities to said holder thereof, due or to become due, or that may be hereafter contracted, the following property, viz.: . . ."

In December, 1929, A. M. Heffner, together with his brother and his son, and a third party, borrowed several sums from the bank, in each case giving their joint and several notes therefor.

Thereafter, Margaret Heffner, the owner of the stock which was collateral security for the note of December 2, 1929, directed the bank to sell and apply so much of the proceeds as was necessary to pay the \$2,000 note and remit to her any surplus. The bank informed her that it held unsatisfied claims for which the stock was pledged as collateral security, against A. M. Heffner, co-maker, and would refuse to comply with her request.

Margaret Heffner sued the bank to compel it to account for the value of the stock and to pay to her the surplus after liquidating the \$2,000 note. The court said (p. 32):

"The controversy, therefore, narrows itself to the proper interpretation of this collateral pledge: whether under it appellee, the holder, was authorized to apply the surplus from the proceeds of the sale of appellant's stock to the satisfaction of other notes made jointly by her husband with others and payable to appellee bank.

"The obligation is the joint and several note of appellant and her husband, A. M. Heffner.

* * * * *

"The clause under consideration lacks a complete expression of the intention of the parties. It speaks of 'any other liability or liabilities,' but

fails to indicate whose liability or liabilities. Certainly, the parties thereto contemplated the inclusion of the idea (if the clause is to have any meaning) 'any other liability or liabilities *of the undersigned,*' or 'any other liability or liabilities *of Margaret and A. M. Heffner.*'

"The natural inference from the clause as we have thus completed it is that the securities or pledged for liabilities similar to those incurred on the note—joint liabilities, the joint liabilities of the undersigned of Margaret, and A. M. Heffner. To conclude otherwise, would require a forced, unusual and argumentative meaning to be placed on the agreement. The joint liability of appellant and her husband is very different from the joint liability (1) of her husband and his brother (2) of her husband, his son, and his brother (3) of her husband and his son and a third party.

"A pledge, like any other contract, where there is any doubt as to its meaning, must be construed with some degree of strictness against the party preparing it."

The Court held in that case that the bank was not entitled to hold the security for the payment of the other notes upon which the plaintiff's co-maker was liable as co-maker with the other parties.

Applying the principle of that case, we contend that the obligation of Samuel Goldenberg as sole and primary debtor as maker of his note is so different from his contingent liability, jointly with his co-endorser, on the note of the corporation, that, in the absence of clear and unmistakable language, the Bank should not be held entitled to hold the collateral for Mr. Goldenberg's note as security for such corporation note.

In *Citizen's First National Bank v. Jones*, 161 Ga. 655 one Mays assigned to the Citizens First National

Bank of Albany, Ga., all of his right, title, interest and equity in certain corporate stocks "to secure whatever indebtedness I may owe to said bank." In holding that under such an assignment the bank was not entitled to hold the stock as security for another note upon which the assignor was an endorser, the Court said (p. 665):

"The words employed in this assignment and transfer are to be given their ordinary signification. There is no reason for giving them a signification peculiar to any branch of commerce. The word 'indebtedness' may sometimes be used to embrace a liability that is merely secondary, but if one endorses a note for another, which makes his liability secondary upon a note, he rarely ranks that liability among his debts. The use of the personal pronoun 'I', while not controlling, strongly indicates that the transfer was made for the personal debt of the transferor. . . ."

In *First National Bank v. Illinois Trust and Savings Bank*, 84 F. 34, a note recited that the maker thereof had deposited collateral security for the payment thereof "and also of all other present or future demands of any kind by the said Bank against the maker, due or not due."

It was held that the Bank was not entitled, after tender of payment of the note, to retain the collateral as security for a loan for a term of years previously made by the Bank to the maker on real estate security.

In *Fullerton v. Chatham National Bank*, 40 N. Y. S. 874, the expression used was, "As collateral security for the payment of the above note and of any and every other indebtedness or liability due or to become due, which may exist on my part to the Chatham National Bank."

It was held that the Bank was not entitled to hold the collateral as security for an indebtedness of a firm of which the pledgor was a member. The Court said (p. 875):

“It is indisputable law that a security may be retained only for the debt or duty to which, by agreement of the parties, it was appropriated. *Duncan v. Brennan*, 83 N. Y. 487; *Talmage, v. Bank*, 91 N. Y. 531.

(p. 876): “In ascertaining the scope and operation of the clause in the agreement relied upon as indicating a purpose to pledge the securities for the firm liabilities, we are to consider the specific transaction between the plaintiff [pledgor] and the bank. He was negotiating a loan to himself, not to his firm, and to secure that loan he hypothecated his individual property. Any general term in the agreement of pledgee, therefore, will be confined to the matter in hand, and not extended to an effect beyond the purpose of the negotiation, and beyond the contemplation of the parties. ‘*Verba generalia restringuntur ad habilitatem rei.*’ Broom Leg. Max. 646. ‘However general the term may be in which an agreement is conceived, it only comprehends those things in respect to which it appears the parties proposed to contract.’

* * * * *

“Had the intention been to cover that [the firm] indebtedness, we may be sure it would not have been allowed to lurk in equivocal phraseology, but would have been declared in the explicit terms exacted by ordinary prudence and habitual with bank officers. Bank officers are not wont to advance money upon an ambiguity. Indeed, upon the entire agreement, it is apparent, not only that the deposit of bonds was as security for plaintiff’s in-

dividual indebtedness exclusively, but for that indebtedness as evidenced by the two demand notes to which the agreement was attached; for it was only in default in the payment of these notes that the bank was authorized to utilize the securities, and it was to the payment of these notes only that the proceeds of the sale of the bonds were to be applied. It is inconceivable that, if the bonds were to be held as collateral for the firm indebtedness, provision would not have been made for the application of the bonds to the extinguishment of that indebtedness."

So, in the instant case, no provision is made for the sale of the collateral except in the event of default in respect of the note itself (§ 4, *ante*, p. 11-12).

In *McCrea v. First National Bank*, 162 Minn. 455, the plaintiff owned a note and mortgage which he loaned to his father to be used as collateral to a note given to a bank. The assignment to the bank disclosed the purpose and added "and for any other indebtedness of" the father to the bank. The father had given a note to a third person, who had assigned the same to the bank as collateral to the indebtedness of such third person to the bank. In holding that the bank was not entitled to hold the plaintiff's note and mortgage as security for the note given to the third person and held by the bank, the Court said (p. 457):

"The term 'indebtedness' as used must be and is construed as meaning direct and not contingent indebtedness."

In *Loyd v. Lynchburg National Bank*, 86 Va. 690 a firm signed a note which contained the expression "if we should come under any other liability or enter into any other engagement with said bank while it holds this obligation, &c.," and the question for determination

was whether collateral pledged with that note could be applied to the liability of the firm as endorser of drafts discounted with the bank. The Court said (p. 694) :

“The language, ‘if we should come under any other liability, or enter into any other engagement, with said bank, while it is the holder of this obligation’, must be construed to refer to any other liability or engagement of the same kind with the one described in the former part of the contract. This language, while ambiguous, must be construed, in the circumstances of this case, to apply to transactions in which the firm are participants and actors. The words are ‘if we’, meaning A. D. Barnes & Co., [the makers] ‘shall come under any other liability, or enter into any other engagement *with said bank*, while,’ &c. And if we read the words, placing emphasis on the words in italics, and construing, as we may, under the authority of many cases, the disjunctive conjunction, ‘or’ as the copulative ‘and’, we think that such will plainly appear to be the meaning of this provision.”

In re Haynsworth, 34 F. 2d, 334, affirmed in *Jones v. Kendall*, 34 F. (2d) 344, a partnership note had been executed by a firm, which had deposited stock as security therefor and for the payment “of all other demands, present or future of the undersigned to the payee.”

One of the members of the firm was a co-maker with third parties of other notes. It was held that the collateral could not be subjected to the payment of the liabilities of the makers of the note with other parties who were not makers of the original collateral note.

In re Evans, 238 F. 543, it was held that collateral pledged for the payment of a note of two joint makers, to secure the payment of “this and all other liabilities of the undersigned,” could not be held as

security for another note made by three parties including the two who had signed the collateral note, the Court saying (p. 545) that the liability of the two makers of the note together with the third person was not another liability of those two persons.

In *First National Bank v. Southworth*, 215 Ill. 640, a husband gave a bank his note and subsequently he and his wife gave the bank another note and collateral to secure it and "all other present and future demands of the said bank against the undersigned, due or not due." It was held that the collateral did not secure the individual note of the husband.

In *Torrance v. Third National Bank*, 210 F. 806, Graham and Salsbury had executed their joint and several note for \$43,000 to their own order and delivered the same, endorsed by them in blank, to the bank with certain collateral. The note recited the delivery of the security "as collateral security for payment of this or any other liabilities of the undersigned, to the holder hereof now due or to become due or that may hereafter be contracted."

Thereafter the makers individually and successively endorsed certain other notes of third parties, which were held by the same bank as held the original secured note. Subsequently the collateral was sold, and the question was whether the surplus remaining after the satisfaction of the collateral note could be applied to the liability of the makers thereof as endorsers of the other notes. The Circuit Court of Appeals held that it could not be so applied, and said (p. 808):

"It seems to us that the words 'of this or any other liabilities of the undersigned' clearly indicate that the other liabilities referred to are of the same character as the joint liability in the \$43,000 note."

EVEN IF THE BANK HAD HAD THE RIGHT TO HOLD THE COLLATERAL FOR THE VOGUE DRY CLEANING COMPANY NOTE DATED JUNE 10, 1932, IT LOST SUCH RIGHT WHEN IT SURRENDERED THAT NOTE AND ACCEPTED A 90-DAY NOTE IN RENEWAL ON SEPTEMBER 12, 1932.

When the Vogue Dry Cleaning Company's note of June 10, 1932, matured on September 12, 1932, the Bank had in its possession securities which it knew belonged to Mrs. Goldenberg. Without notice to, or the consent of, Mrs. Goldenberg, it surrendered this note and accepted a new note from the Vogue Dry Cleaning Company, dated September 12, 1932, and payable ninety days after date. Therefore, assuming, without conceding, that the Bank had the right to hold the securities for the note of June 10, 1932, it lost that right when it extended the time for the payment of the Vogue Dry Cleaning Company's obligation.

The owner of property pledged to secure the debt of another stands in the position of a guarantor or surety, and the collateral "will be released under the same circumstances that a surety personally bound would have been released. *Brandt on Suretyship* (2d Ed.) sec. 34. . ."

Daviess County Bank v. Wright, 129 Ky. 21, 29.

To the same effect is *Price v. Dime Savings Bank*, 124 Ill. 317, wherein the Court, in holding that the owner of securities pledged to secure the debt of another was entitled to have the securities released to him, said (p. 324):

"The surrender of the old notes, and their cancellation was a sufficient consideration for the new notes given, and the holder, by such surrender and cancellation, put it out of his power to sue on the indebtedness or enforce its collection until the maturity of the new notes."

It is a well settled and familiar rule that if a creditor,

by positive contract with the principal debtor, and without the consent of the surety, extends the time of payment by the principal debtor, he thereby discharges the surety; because the creditor, by so giving time to the principal, puts it out of the power of the surety to consider whether he will have recourse to his remedy against the principal, and because the surety cannot have the same remedy as he would have had under the original contract; and it is for the surety alone to judge whether his position is altered for the worse.

Union Life Insurance Co. v. Hanford, 143 U. S. 187, 191.

Edwards v. Goode, 228 F. 664, 666.

Catholic University v. Morse, 32 App. D. C. 195, 202.

In *Burnap v. National Bank of Potsdam*, 96 N. Y. 125, it was held that the owner of a bond, pledged for the debt of another, was entitled to a release of the same when the pledgee, at the maturity of the debt for which the bond had been pledged, accepted a renewal note therefor.

CONCLUSION.

In conclusion, it is respectively submitted, that the case should be remanded to the Court below, with directions to enter a decree directing the Receiver for the District National Bank to deliver the securities to Mrs. Goldenberg, upon payment of the balance owing on the note of Mr. Goldenberg, with interest to date of payment.

Respectfully submitted,

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EUGENE YOUNG,

Attorneys for Appellant.

FILED JUN 1 - 1937

Monica Burke

CLERK

IN THE
United States Court of Appeals
FOR THE DISTRICT OF COLUMBIA.

No. 6885.

CARRIE GOLDENBERG, *Appellant*,

v.

JUSTUS S. WARDELL, as Receiver of District National
Bank of Washington, and SAMUEL GOLDENBERG,
Appellees.

**BRIEF FOR APPELLEE JUSTUS S. WARDELL AS
RECEIVER OF DISTRICT NATIONAL BANK
OF WASHINGTON.**

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Justus S. Wardell, Receiver,
District National Bank of
Washington, D. C.*

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**BRIEF FOR APPELLEE JUSTUS S. WARDELL AS
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OF WASHINGTON.**

STATEMENT OF CASE.

Samuel Goldenberg, husband of the appellant, Carrie Goldenberg, was indebted to District National Bank of Washington on a certain promissory note (R. 11, 25) dated October 20, 1931, by which he promised to pay to said Bank \$12,000.00 on demand. The note was in general collateral form and certain shares of stock were

mentioned as being pledged thereunder. The note was curtailed from time to time until on July 18, 1932, there was a principal balance due of \$6,594.83.

Samuel Goldenberg, president of a corporation known as Vogue Dry Cleaning Company, Inc. (R. 28), and the owner of fifty per cent of its stock, was an endorser on a note of Vogue Dry Cleaning Company (R. 9, 35) dated June 10, 1932, executed by Samuel Goldenberg, president, and payable ninety days after date to District National Bank of Washington in the sum of \$15,000.00. One Morris Y. Needle was also an endorser of said note. This note represented a balance due, after various renewals and curtailments, on an original loan in 1927 by the District National Bank to Vogue Dry Cleaning Company in the amount of \$40,000.00. The notes evidencing the original loan and each and every renewal thereof bore the endorsements of said Samuel Goldenberg and Morris Y. Needle. On September 12, 1932, the note of the Vogue Dry Cleaning Company of \$15,000.00 was renewed by a renewal note of that date, payable in ninety days to District National Bank in the sum of \$15,000.00 (R. 36). The Vogue Dry Cleaning Company went into bankruptcy in October or November, 1932 (R. 28), or a month or two after the making of said renewal note, having operated at a substantial loss (R. 41) for many months; and suit was later brought on such note by the Bank against Samuel Goldenberg and Morris Y. Needle, as endorsers in law cause No. 82,373 in the then Supreme Court of the District of Columbia (R. 10). This suit resulted in a judgment against Samuel Goldenberg on March 9, 1935, in the amount of \$15,000.00, with interest from September 12, 1932 at 6%, besides protest fees, attorneys' fees and costs (R. 16). No part of this judgment

has been paid (R. 16, 35), and since the judgment against Goldenberg was for the full amount of the note, the inference is that no dividends were paid to unsecured creditors, in said bankruptcy proceedings, by Vogue Dry Cleaning Company.

Appellant filed her bill in equity (R. 1) in the court below, in form designated a bill to require delivery of securities, alleging among other things that her husband, Samuel Goldenberg, acting for himself and also as her agent, made an agreement with the District National Bank of Washington, through Christian J. Gockeler, its officer, to turn over the securities pledged under the collateral note upon payment or arrangement for payment by appellant of the balance due on the collateral note of Samuel Goldenberg dated October 20, 1931.

Appellant withdrew \$4,000.00 from Oriental Building and Loan Association and turned it over to her husband, who caused it to be paid on his individual collateral note. The Bank refused to turn over the collateral until the note of Vogue Dry Cleaning Company, upon which Samuel Goldenberg was endorser, was also paid.

The bill of complaint asked for the delivery of the specific securities, which, on July 18, 1932 were worth approximately \$9,000.00 and at the time of the filing of the bill, approximately \$11,000.00 (R. 4, 5), and are now worth about \$17,000.00, upon the payment of merely the balance of \$2,594.83 due on the individual collateral note of Samuel Goldenberg. The Court below held that plaintiff was entitled to recover \$4,000.00, together with interest from July 18, 1932. The sole assignment of error is that the decree of the lower court was erroneous in not awarding plaintiff the securities upon payment of the balance due on the collateral note.

It is thus seen that appellant seeks in this appeal from a final decree of a court of equity to obtain for the sum of \$6,594.83 securities of a value greatly in excess of that amount, and to defeat the right of the Receiver of District National Bank of Washington to satisfy in part the foregoing judgment of \$15,000.00 against Samuel Goldenberg, the owner of the securities.

ARGUMENT AND AUTHORITIES.

Interpretation of Final Decree.

In their brief (pages 7, 8) counsel argue that the mere fact that the Court below signed a decree awarding Mrs. Goldenberg a lien on the collateral of her husband now held by the Receiver for payment of Mr. Goldenberg's indebtedness to the bank

“is equivalent to a finding that the money paid to the bank was her money, was known to the bank to be her money, and was paid under the agreement claimed by her and testified by her and her husband to have been made.”

It will be noted that the Court made no findings of fact, and any findings and conclusions are limited to those appearing in the final decree of June 22, 1936. The sole effect of this decree is to give Mrs. Goldenberg a lien to the extent of \$4,000.00, and interest, on the securities mentioned in said decree as being in the hands of the Receiver; and that upon payment of said sum to Mrs. Goldenberg the said securities are to stand discharged of all claims of Mrs. Goldenberg, and all other relief prayed in the bill of complaint is by said decree expressly denied. In view of this holding it is believed that the final decree of the Court below can not

be stretched to accommodate the contentions advanced by counsel for appellant. Furthermore, since no specific findings of fact were made, no facts with reference to the ownership of the funds or the alleged agreements between Mr. Goldenberg, Mrs. Goldenberg, and the bank appear which would justify the reversal of the decree of the Court below.

The contention of counsel for appellant then is that although it is admitted that Mrs. Goldenberg was not the owner of the securities in question, and was not a debtor of the bank or a party liable on any of the notes in controversy, or otherwise interested in the financial transactions between her husband and the District National Bank, nevertheless, the decree of the Court below stands for the proposition that she is entitled to become the owner of securities in which she had no interest, worth \$9,000.00 on July 8, 1932, and \$11,000.00 at the time the bill was filed, and now worth, as the Court will notice, approximately \$17,000.00; and this at a time when Mr. Goldenberg's liabilities to the bank had not been fully satisfied and he was subject to being called upon to pay his liability as endorser of the Vogue Dry Cleaning note.

It can hardly be asserted that on the evidence presented in this case a Court of Equity would or should have found that appellant was entitled to the securities in controversy.

The District of Columbia Code (1924, Sections 1120 and 1151) makes ample provision for the protection of creditors from conveyances or transfers between husband and wife which will prejudice the rights of such creditors. In the case of *Seitz v. Mitchell* (D. C.), 94 U. S. 580, this question was discussed by the Supreme Court of the United States, which held that

purchases of real or personal property by the wife of an insolvent debtor during coverture are justly regarded with suspicion, and said:

“In a contest between the creditors of the husband and wife there is and there should be a presumption against her, which she must overcome by affirmative proof.”

In the case of *Evans v. Bell*, 49 Appeals D. C., 238, this Court held:

“It is a well settled rule of law that where the husband, being indebted, conveys all his property to his wife, as here, the burden is on her to prove distinctly and satisfactorily that she is entitled to the property. Such a transaction is viewed by the law with grave suspicion and requires close scrutiny in the hands of a court of equity.

It must be assumed that the Court below had this rule in mind when it interpreted the evidence and weighed the testimony adduced at the trial of this case.

As having further bearing upon the effect of the final decree in this case we have the testimony of Mr. Gockeler (R. 36), which constitutes a denial that any agreement was made to turn over the securities to appellant or Samuel Goldenberg upon the payment of the collateral note of the latter. The tenuousness of the testimony of Samuel Goldenberg upon this point, besides actual confictions occurring in it, and further confictions with his written statements of January 3, 1933, long prior to the suit commenced by appellant, shows conclusively that there was no suggestion that the securities at any time were to be turned over to Mrs. Goldenberg. Among other things Samuel Goldenberg said in his written statement (R. 29):

“Gockeler did say, however, that I must know that there had been a rather serious run on the Perpetual Building Association and that he, Gockeler, thought that since Mrs. Goldenberg was only getting five percent (5%) on her money in the Building Association, while I was paying six percent (6%) on my collateral loan of \$7,000.00 held by the District National Bank, *that it would be a wise thing for me to persuade Mrs. Goldenberg to permit me to use the money which she had on deposit in the building association to curtail my note at the District National Bank.*”

Nowhere in this statement of Samuel Goldenberg made in January of 1933 is there any suggestion that the securities were to be turned over to Mrs. Goldenberg. Later on in the statement, Goldenberg says (R. 29):

“Mr. Gockeler specifically stated that if Mrs. Goldenberg *would allow me to use the money in the Building Association to curtail my note as suggested*, the bank would deliver the collateral held by it if the remaining unpaid balance of the note was paid.”

This statement was evidently carefully prepared, and it is indeed significant that it not only does not say, but also does not even infer that Mrs. Goldenberg at any time was to be the owner of the securities. It is to be observed that appellant claimed that the right to the securities existed by virtue of an agreement alleged to have been made on July 18, 1932, yet her bill was not filed until January 24, 1935 (R. 1), when the Receiver was about to obtain judgment against her husband.

Moreover, the cross-examination of Mr. Gockeler (R. 38) and the testimony of Joshua Evans, president of

the District National Bank in 1932, show that Gockeler had no authority to make any agreement to release collateral. Gockeler arranged for loans (R. 38) but he did not have charge of collateral. Mr. Offutt was the vice-president who had charge of the collateral. The "passing on collateral" spoken of by Samuel Goldenberg in his testimony (R. 27) and mentioned on page 9 of appellant's brief, clearly has reference to determining the sufficiency of collateral in passing on loans. Samuel Goldenberg was the president of Vogue Dry Cleaning Company and had considerable experience in dealing with the District National Bank and is presumed to know its various departments. The actual and apparent scope of Gockeler's authority having been merely to pass on loans, and not to have charge of collateral, no authority existed in Gockeler to bind the Bank by any alleged agreement to release collateral; and Mr. Goldenberg could not have relied upon such alleged authority.

Having in mind the limitations of Mr. Gockeler's authority, and the confinement of his activities and agency to the one department in which he worked, he could not have represented the Bank generally with reference to the status of another department with which he was unfamiliar. Therefore, it must be presumed that if Mr. Gockeler made any agreement to release the collateral to Mr. Goldenberg, such agreement must have been made subject to any restrictions that the Bank had placed upon the release of the collateral by reasons of prior demands upon it.

Since the record, in view of the deficiencies of the evidence adduced by plaintiff, as well as the conflict of testimony, as pointed out above, clearly supports the denial by the court below of the right to the secu-

rities, it is respectfully submitted the ~~appeal~~^{decision} should be affirmed for these reasons alone.

The Collateral Note Binds the Securities for Liability of Samuel Goldenberg on Both Notes.

The burden of appellant's brief is that the Bank had no right to hold the securities for Samuel Goldenberg's liability on the so-called Vogue Dry Cleaning note, now reduced to judgment. Accordingly, we turn to this contention.

The collateral note (R. 11, 25) states that the securities deposited therewith are "pledged as collateral security for the payment of this and any other liability of the undersigned to the holder hereof * * *." The collateral note also provides (R. 12):

"SECOND. That the collateral herewith pledged, including any and all additions thereto or substitutions therefor, together with any and all other securities and property in the possession of the holder (belonging to any of the parties liable hereon), whether pledged or left with the holders hereof for collection or safekeeping, shall be held as one general collateral for the whole or any part of this, any or all obligations due, or hereafter to become due by the undersigned to the said holder."

It is respectfully submitted these provisions of the pledge agreement authorize the holding of the securities for the liability of Mr. Goldenberg on the Vogue Dry Cleaning note. The word "liabilities" in the first quoted provision includes contingent liabilities. In *Cochran v. United States*, 157 U. S. 285, 39 Law ed. 704, the Court had under consideration the question whether the word "liabilities" included the contingent

liability of guarantors of a note. In so holding, the Court said (Page 295):

“The indictment, therefore, raises the question whether an unmatured note, the payment of which at maturity is guaranteed by the bank, is such a liability as is required by law to be shown in the report to the Comptroller of the Currency. The fact that the note had not matured cuts no figure in the case. If the bank had *made* the note, it would not be claimed that the note was not a liability, though it were not yet due. The real question is, whether the fact that the bank was only contingently liable prevented its character as a ‘liability’ of the bank from attaching.

We know of no definition of the word ‘liability,’ either given in the dictionaries or as used in the common speech of men, which restricts it to such as are absolute, or excludes the idea of contingency. In fact, it is more frequently used in the latter sense than in the former, as when we speak of the liability of an insurer or a common carrier, or the liability to accidents or to errors; and in Webster’s Dictionary the word ‘liable’ is said to refer ‘to a future possible or probable happening, which may not actually occur: as horses are liable to slip; even the sagacious are liable to make mistakes.’”

The following State cases support the view that the word “liabilities” is very broad, more comprehensive than “debts”, and includes contingent obligations:

Fidelity & Deposit Co. of Md. v. Commonwealth Trust Co., 119 N. Y. S. 598;
Wentz v. State, 108 Neb. 597, 188 N. S. 467;
State v. Sheetz, 26 Utah 105, 72 Pac. 334;
Brogan v. Ferguson, 101 Fla. 1306, 131 So. 171;
State v. Board of Trustees, 7 P. (2) 543.

The foregoing decisions, it is respectfully submitted, are sufficient to dispose of appellant's contention that the collateral agreement did not include Goldenberg's contingent liability as endorser of the so-called Vogue Dry Cleaning note.

It might be said parenthetically that appellant states (Page 11 of brief) that the Receiver adduced no testimony to explain why the collateral was held. It is hardly necessary to introduce testimony to state a legal position; however, paragraph 13 of the Receiver's answer (R. 10) and the testimony of Joshua Evans (R. 40) show why the collateral was held. The argument that the Bank is advancing in this Court for the first time that it may hold the collateral for Goldenberg's obligation on the Vogue Dry Cleaning note is untenable.

In *Mulert v. National Bank of Tarentum*, 210 Fed. 857, it was held that language almost precisely similar to that contained in the pledge here, secured both direct liability and contingent liabilities of the pledgor as endorser. It was accepted without question in the case that the contingent liabilities were secured. See also *Fourth National Bank v. Stahlman*, 132 Tenn. 367, L. R. A. 1916A 568; *B. C. Bynum Mercantile Company v. First National Bank*, 187 Ala. 281; *Beacon Trust Company v. Robbins*, 173 Mass. 261; *Citizens Bank & Trust Company v. Thornton*, 174 Fed. 752; *Commercial Bank v. Armstrong*, 179 P. 432 (Cal. 1919); *Oleon v. Rosenbloom*, 247 Pa. 250; *Brotherhood Engineers v. Shepherd Co.*, 51 Fed. (2) 153, 21 R. C. L. 655 and cases cited.

As Mr. Justice Holmes said in the case of *Hollowell v. Blackstone National Bank*, 154 Mass. 359, 13 L. R. A. 315, the broad language in collateral agreements of the

kind here involved "is not inserted with a view to certain specific debts, but as a drag-net to make sure whatever comes to the creditor's hands shall be held by the latter until its claims are satisfied."

Counsel for appellant have cited a number of cases to show that property jointly pledged or property pledged under a joint obligation may not be held as collateral security for individual obligations, and that property individually pledged may not be held for joint obligations. Cases cited by counsel for appellant are:

Fullerton v. Chatham National Bank, 40 N. Y. S. 874.

Loyd v. Lynchburg National Bank, 86 Va. 690.

Jones v. Kendall, 34 Fed. (2) 344.

In re Evans, 238 Fed. 543.

First National Bank v. Southworth, 215 Ill. 640.

Torrance v. Third National Bank, 210 Fed. 806.

Heffner v. First National Bank, 311 Pa. 29.

These cases do not concern the question here involved. They were all decided not upon the point that contingent liabilities were not covered by pledge, but on the point that collateral held under a joint note could not be applied to an individual obligation or securities held under an individual note could not be used to satisfy a joint obligation. This is not the case at bar. The collateral note was not a joint note made by Samuel Goldenberg and Mrs. Goldenberg, but was made by Samuel Goldenberg alone. The securities pledged under his collateral individual note and agreement were admittedly his alone. His liability on the Vogue Dry Cleaning note was also an individual one, since the note was payable to the District National Bank. The clear distinction between the cases cited for appellant

and the instant case is forcefully shown by *Torrance v. Third National Bank of Pittsburgh*, 210 Fed. 806, one of the very cases upon which counsel for appellant rely. In that case the collateral security was pledged under a joint note, and in distinguishing the case of *Mulert v. National Bank of Tarentum*, 210 Fed. 857, which it had previously decided, the court said:

“If, as we have said, the words ‘jointly and severally’ in the body of the note have relation only to the remedy of the payee or holder, and do not touch the relation of the makers interse, the difference between the liability thus created and the *individual* and *several* liability of successive indorsers of a promissory note must be at once apparent. The indorser who pays the amount due on the note is not liquidating a *joint liability*. He may, it is true, have recourse to a prior indorser for the whole, not a proportionate, amount that he had paid and may recover on the individual contract implied in the indorsement, but the liability of each indorser, *individual* and *several*, is in its essential character very different from the liability of the *makers* of a *joint* and *several* note.”

The liability of Goldenberg on the collateral note was his individually, as is likewise his liability on the Vogue Dry Cleaning note of which he was endorser, and which has been reduced to judgment against him.

The reading of the above decisions upon which Counsel for appellant rely shows the existing facts and the reasoning applied to be similar to the facts and reasoning in the *Torrance* case, *supra*. Moreover, the other cases relied upon by Counsel for appellant, such as *Citizens First National Bank v. Jones*, 161 Ga. 655, and *McCrea v. First National Bank*, 162 Minn. 455, are not in point because the language of

the pledge limited the collateral to "indebtedness", a much less comprehensive term than "liability".

Aside from the broad language of the pledge, which in terms, it is submitted, clearly covered the contingent liability of Samuel Goldenberg on the Vogue Dry Cleaning note, it will be observed that from the testimony of Mr. Goldenberg himself, he had for fifteen years prior to July, 1932, been personally dealing with the District National Bank, making all deposits and attending "to all of the finances for the Vogue Dry Cleaning Company, Inc." (R. 25), and that "the Vogue Dry Cleaning Company has always been intermingled with me at the bank" (R. 31). Mr. Goldenberg's individual name always appeared on the note evidencing the original loan to Vogue Dry Cleaning Company, originally for the amount of \$40,000.00 in 1927, and on each and every renewal thereof. When Mr. Goldenberg sought to borrow \$12,000.00 on his individual demand note in 1931, it is fair to presume that collateral was required having in mind his liability on both notes.

Contrary to the contention of Counsel for appellant, the right of the District National Bank to hold the securities as collateral for the Vogue Dry Cleaning Company note is not affected by the question of whether credit was or was not extended to Vogue Dry Cleaning Company on the strength of the collateral. (See *Oleon v. Rosenbloom*, 247 Pa. 250; *Heffner v. First National Bank*, 311 Pa. 29; *Citizens Bank and Trust Company v. Thornton*, 174 Fed. 752; *Mulert v. National Bank of Tarentum*.)

The Renewal of the Vogue Dry Cleaning Company Note on September 12, 1932, Did Not Affect the Right of the District National Bank to Hold the Securities in Controversy.

It hardly needs citation of authority to sustain the right of the Bank to hold the securities for the note of September 12, 1932, which was in renewal of the note of June 10, 1932. The overwhelming weight of authority is to the effect that a renewal note does not release or destroy the pledge. As the court said in *Citizens Bank and Trust Company v. Thornton*, 174 Fed. (C. C. A.) 752, 762:

“By its express terms the pledge secured ‘any other debt due or to become due.’ The renewal of the old Buckmaster and Williams debt by giving a new note would not release or destroy the pledge as a security for the debt, or deprive the debt, in its new form, of the benefit of that pledge.”

To the same effect are *In re Goodhue Motor Company*, 28 Fed. (2d) 402; *Church v. Swetland*, 243 Fed. 289; 249 U. S. 579; *Cobb v. Vaughan*, 141 Va. 100; *Holland Trust Company v. Waldell*, 75 Hun. 104, 26 N. Y. S. 980; *First National Bank v. Gunhus*, 133 Iowa 409, 110 N. W. 611.

CONCLUSION.

For the foregoing reasons, it is respectfully submitted the decree of the lower court should be affirmed.

Respectfully submitted,

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